

# Cass County Probate Court

Law & Courts Building  
60296 M-62, Cassopolis, MI 49031  
Phone: (269) 445-4454 Fax: (269) 445-4453

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*This document is for informational purposes. It is not a substitute for legal advice. The Cass County Probate Court staff cannot give you legal advice and cannot tell you what to do. If you have legal questions, you should speak with an attorney.*

## Conservatorship

### Filing Fee:

\$175  
\$12 for Certified Letters of Conservatorship

### Forms Used:

**PC 639** Petition for Appointment of Conservator and/or Protective Order  
Cass County Form. [Testimony of Interested Persons Form](#)  
Cass County Form: [Criminal History Form for Proposed Fiduciary Durable Power of Attorney and/or Patient Advocate Designation](#) – If applicable  
**PC 667** What You Need to Know Before Filing a Petition to Appoint a Conservator  
*\*Please sign and date the bottom of the page.*  
**PC 668** Notice on Petition for Conservator or Protective Order  
*Must be personally served on the individual to be protected.*  
**PC 562** Notice of Hearing  
**PC 617** Declaration of Intent to Give Notice by Publication  
*Used if the address for an interested party is unknown.*  
**PC 563** Publication of Notice of Hearing  
*Used if the address for an interested party is unknown.*  
**PC 564** Proof of Service  
**PC 571** Acceptance of Appointment  
[MC 97, Personal Identifying Information Form](#)  
[MC 97a, Personal Identifying Information - Addendum](#)

### **After the conservator is appointed:**

**PC 640** Order Regarding Appointment of Conservator  
**PC 645** Letters of Conservatorship  
  
**PC 674** Inventory for a Conservatorship  
*An Inventory must be filed within 56 days from the date of appointment.*  
**PC 583** or **PC 584** Account of Fiduciary  
*An account form is used after a Conservator is appointed and must be filed yearly.*  
**PC 585a** Petition to Allow Account

\*All SCAO approved forms are available at the website listed below:

<https://courts.michigan.gov/Administration/SCAO/Forms/Pages/Probate-Index.aspx>

### Interested Persons:

The interested persons need to be listed on the petition, along with their proper address. If an interested person is not included or is not properly served, *the hearing cannot be held*. Per MCR 5.125(C)(25), the interested persons in a Petition for Appointment of a Conservator are:

1. The individual to be protected if 14 years or older (must be personally served);
2. The presumptive heirs of the individual to be protected.
  1. If no heirs, then the Attorney General.
3. If known, a person named as attorney in fact under a Durable Power of Attorney;
4. The nominated Conservator; and
5. Any governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.
  1. Social Security Administration, Veteran's Affairs, Department of Health and Human Services, etc.
6. A guardian or conservator that has been appointed by the court in another state to manage the protected individual's assets.
7. Additional interested persons per MCR 5.125(A), may include:
  1. Any guardian, conservator, or guardian ad litem for an interested person;
  2. Any attorney who has filed an appearance;
  3. Any special fiduciary;
  4. Any person who has filed a request for notice.

### Service:

The Petitioner must serve a copy of the Petition and Notice of Hearing on the person to be protected and all interested persons. The interested parties must be served 14 days prior to the hearing if served by mail, or 7 days prior to the hearing if served personally. The person to be protected must be served personally and must be served with [PC 668](#) – Notice of Petition for Conservator or Protective Order. The Petitioner must then submit a Proof of Service ([PC 564](#)) prior to the hearing date confirming that all interested persons were served.

**Publication** may be completed for interested persons whose address or whereabouts are unknown. *MCR 5.105(A)(3)*. In such situations, the Petitioner must complete [PC 617](#) – Declaration of Intent to Give Notice by Publication and [PC 563](#) – Publication of Notice of hearing. The notice must be published in a Cass County newspaper once at least 14 days prior to the hearing. The publication fee is paid directly to the newspaper. For more information on publication, you may wish to contact the newspaper directly. Leader Publications is commonly used as they publish four papers in Cass County. The newspaper will provide the Petitioner with a Proof of Publication, which the Petitioner must file with the Court prior to the hearing.

An interested person can waive notice of a hearing and consent to the relief requested in the petition by completing [PC 561](#) Waiver/Consent. *MCR 5.104(B)(1)*.

Hearing Date:

The petition will be set for a hearing by the Court. Typically, the hearing date is 4-6 weeks after the petition is filed. *The petitioner must attend the hearing or the petition will be dismissed.*

Appointment of a Guardian ad Litem:

The Court must, by law, appoint a Guardian ad Litem (GAL) to represent the interests of the individual to be protected, unless the person has their own attorney. *MCL 700.5406(2)*. It will be the GAL's responsibility to visit the person and make a recommendation to the court as to whether or not the conservatorship is needed. The GAL charges a fee for their service, which is the responsibility of the Petitioner to pay. This fee does not have to be paid at the time of the filing, but the Court will seek reimbursement from the petitioner at a later date.

Suitability of Proposed Conservator

To evaluate the suitability of the proposed conservator, the Court will request a criminal history check of the proposed fiduciary. Therefore, the proposed conservator will need to complete the Criminal History Authorization form and submit it to the Court along with a copy of their driver's license. This form and the results of the search will be maintained confidentially.

**Conservatorship of Adults**

**Terms and Definitions**

- Petition:** The form filed with the Probate Court that tells the Court why a conservatorship is needed and who should be appointed.
- Petitioner:** The person who signs the petition and brings the matter to the attention of the court.
- Protected Individual:** The subject of the petition who is believed to be in need of a conservator.
- Conservator:** The person appointed by the Court to manage another person's financial affairs.
- Ward:** Once the Judge determines that the Respondent is legally incapacitated and needs a guardian, he/she is named a Ward of the Guardian.
- Guardian:** The person appointed by the Court who has legal authority to make decisions on behalf of a legally incapacitated individual regarding the person and his/her well-being.
- Guardian ad Litem:** A person appointed by the Judge to investigate and represent the best interests of the respondent.

**Legally Incapacitated Individual:** An adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions.

## Overview

### *When is a Conservatorship necessary?*

A conservator is a fiduciary appointed by the Court to manage the assets of another individual. A conservatorship may be necessary if an individual is unable to manage his/her property and business affairs effectively because of:

- Mental illness
- Mental deficiency
- Physical illness or disability
- Chronic use of drugs
- Chronic intoxication
- Confinement
- Detention by foreign power
- Disappearance

And, the individual's property will be wasted or dissipated unless proper management is provided or funds are needed to provide support, care, and welfare to the individual or his/her dependents. Also, an individual who is mentally competent can request the appointment of a conservator if they are unable to manage his/her property effectively because of age or physical infirmity. [MCL 700.5401](#)

### *Are there any alternatives to a Conservatorship?*

There may be some alternatives to a conservatorship, which are mentioned on form [PC 667](#), which is included in this packet. When filing a petition for conservatorship, the petitioner must sign this form acknowledging that they have read the information.

### *Who can file the petition?*

The petition can be filed by the person to be protected, any person who is interested in the individual's estate, affairs, or welfare, or any person who would be adversely affected by the lack of effective management of the individual's property and business affairs. [MCL 700.5404\(1\)](#).

### *Where do you file the petition?*

The proper venue for a conservatorship petition is the county in which the individual to be protected resides. If the individual to be protected resides outside of Michigan, but has property in Michigan, the petition should be filed in the county where the property is located. [MCL 700.5403](#).

### *What are the Rights of the Individual to be Protected?*

The subject of the conservatorship proceeding must be personally served with [PC 668](#) – Notice on Petition for Conservator or Protective Order, which notes the individual has the right to:

- An independent evaluation;
- Be present at the hearing;
- Be represented by an attorney;
- Present evidence and cross-examine witnesses;
- A trial by jury;
- Request that the hearing be closed to the public.

[MCL 700.5406](#)

### ***What happens after the hearing?***

If the Probate Judge is satisfied that the statutory grounds for a conservatorship have been established by clear and convincing evidence, the Judge may appoint a conservator for the protected individual. [MCL 700.5401](#). The Judge may require that the conservator obtain a bond. [MCL 700.5410](#). If ordered, it is the conservator's responsibility to obtain the necessary bond and file it with the Court for approval. The conservator cannot act until Letters of Conservatorship are issued, which are issued only after the conservator has filed an acceptance and furnished the required bond.. [MCL 700.5412\(1\)](#)

### **Responsibilities of a Conservator**

The conservator is accountable to the protected person, the heirs, and to the court for all action that he/she may take on the protected individual's behalf. The conservator should be aware of all the obligations required by law and must understand that he/she has a duty to act in the best interest of the ward, to not commingle funds (***no joint accounts***), to avoid conflicts of interest, and to keep adequate records. Applicable statutes noting duties include MCL 700.5416 through MCL 700.5433.

These are not the only duties of the conservator. The conservator must file certain documents with the court. An inventory must be filed within 56 days of appointment ([PC 674](#)). [MCL 700.5417](#) and [MCR 5.409](#). An accounting must be filed each year ([PC 583](#) or [PC 584](#)) along with a Petition to Allow Account ([PC 585a](#)). [MCR 5.409](#). There is a \$20 filing fee for each account. A copy of these filings must be served on the interested parties and the protected individual, who have a right to object.

The Court will send out a pre-notice reminder along with the necessary paperwork around the due date of these filings. In order to complete the accounting, the conservator should keep track of all income, gains, losses, and expenses throughout the year. A final accounting must be filed if the conservator is removed or resigns, and when a conservatorship is terminated.

As a reminder of the required filings, the Court will mail the conservator a Notice of Duties after appointment. An example can be found at the last page of this handout. ***\*The court cannot assist the conservator in filling out the required filings. Failure to file the inventory or annual accounts can result in the suspension of the conservator's authority.***

### **Attorney for the Petitioner**

The law regarding conservatorships is complex, and the court personnel cannot give you legal advice or act as your attorney. Failure to understand the applicable law and court rules is not an excuse for non-compliance. Therefore, it is recommended that the Petitioner seek the advice of an attorney. This informational packet and forms are provided to help you understand the procedure involved. It is not a complete statement of the law and it is not intended to teach you the law. If you have legal questions, you will need to speak with an attorney.

## Statutes and Court Rules

- The Michigan Compiled Laws (MCL) that are referenced in this document can be accessed through the link below:
  - [MCL Search](#)
- Many resources can be found on the Michigan Courts website, including the current court rules and the Probate Court forms.
  - [Chapter 5 - Michigan Court Rules](#)

## Legal Resources

- **State Bar of Michigan** - <https://www.michbar.org/>
  - **Legal Resource and Referral Center** - <https://lrs.michbar.org/>
- **Michigan Legal Help** - <http://michiganlegalthelp.org/>
- **Legal Aid** - Services are available to individuals who are low-income or over 60 years old, and live in Cass, Kalamazoo, Van Buren, or St. Joseph counties.
  - Contact: (888) 783-8190
  - <https://www.lawestmi.org/>
- **Cass County Council on Aging** - They offer a free legal clinic on a monthly basis that is available to seniors and individuals with disabilities. Please call the organization to learn more. An appointment is required.
  - Contact: (269) 445-8110
  - <http://casscoa.org/>
- **Elder Law of Michigan, Inc.** - They offer a variety of services including pension counseling, benefits access counseling, technical services, and professional services.
  - Contact: (866) 400-9164
  - <https://www.elderlawofmi.org/>

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*\*The information contained in this notice is an example of the Notice generated by the Court's case management system. After a conservator is appointed, the Court will mail the fiduciary a Notice that will be specific to that conservatorship.*

## Notice to Conservator of Certain Duties

### **As Required by Law and Michigan Court Rules, You are Notified:**

You are required to file with this court the following written reports using the indicated form(s) at the indicated times. Forms are available at the court.

**INVENTORY:** As the conservator, you are required by law to prepare an inventory of the assets of the estate that you have been given authority over within 56 days from the date of your appointment. You must also provide a copy of the inventory to the protected and to the interested persons as specified in the court rules. (May use form [PC 674](#), Inventory).

**ACCOUNTS:** As the conservator, you must file an annual account unless otherwise ordered by the court. An accounting must be filed within 56 days after the end of the accounting period. The accounting period ends on the anniversary date of the issuance of the letters of authority, unless the conservator selects another accounting period or unless the court orders otherwise. If you select another accounting period, notice of that selection shall be filed with the court. The accounting period may be a calendar year or a fiscal year ending on the last day of a month. You may use the same accounting period as that used for income tax reporting, and the first accounting period may be less than a year but not longer than a year. On filing, the account may be set for a hearing or the hearing may be deferred to a later time. Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. (Use form [PC 583](#), [PC 584](#) or [PC 648](#), 'Account').

In addition, you must provide a copy of the account to the protected individual and to the interested persons as specified in the Michigan court rules. There may be a \$20 filing fee for each accounting filed.

**CHANGE OF ADDRESS:** You are required to inform the court of any change in the ward's address within 14 days of the change. You are also required to keep the court and interested persons informed in writing within 7 days of any change in your address.

**DEATH OF PROTECTED INDIVIDUAL:** If the protected individual dies during the conservatorship, you must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 56 days of the date of death.

The inventory and all accounts must be served on the required persons at the same time they are filed with the court. After servicing the required persons, you must promptly file a proof of service with the court.

**ATTENTION:** The above provisions are reporting duties only and are not the only duties required by you. See MCL 700.5416 through 700.5433 for other duties of the conservator. Your failure to comply with the above reporting duties may require the court to appoint a special fiduciary in your place and to suspend your powers. This may result in your removal as fiduciary. The court is prohibited by statute from giving legal advice.

Keep this notice for future reference.