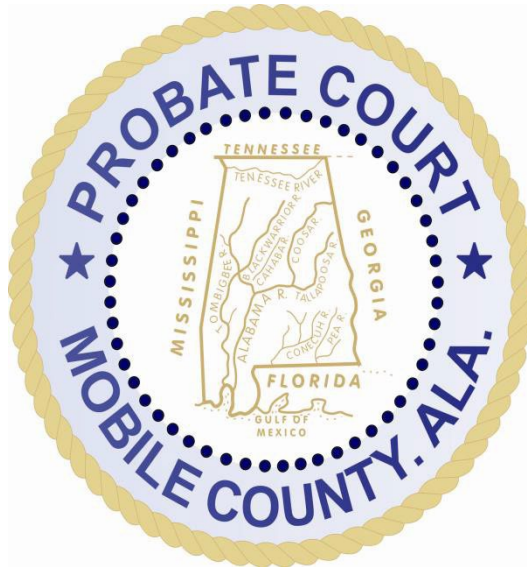

CONSERVATOR HANDBOOK



Produced by the

PROBATE COURT OF MOBILE COUNTY

With the assistance of the

PROBATE SECTION

of

THE MOBILE BAR ASSOCIATION

Revised March 2024

PROBATE COURT OF MOBILE COUNTY
Post Office Box 7
Mobile, Alabama 36601
(251) 574-6001

To: Attorney of Record

Attached is the Handbook for Conservators as prepared with the assistance of the Probate Section of the Mobile Bar Association. Provided also is a CERTIFICATE which shall be used to confirm that the proposed conservator has reviewed the handbook information with their attorney.

At your convenience, and prior to the hearing on the petition for the appointment of conservator, please give this handbook to your client and review same with him/her. At the hearing, please file with the Court the executed CERTIFICATE 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.

C. Mark Erwin, Judge of Probate
Adopted July 29, 2003

IN THE PROBATE COURT OF MOBILE COUNTY, ALABAMA

IN RE: THE ESTATE OF

Case Number

Alleged Incapacitated

CERTIFICATE

I do hereby attest and certify to the Probate Court that I have read and reviewed the foregoing Conservator's Handbook and discussed the provisions of said Handbook with my attorney and I understand all of the provisions contained herein.

Signed this _____ day of _____, 20_____

Proposed Conservator

If represented by counsel:

I, the undersigned as attorney for the proposed conservator, do hereby affirm that I have thoroughly reviewed the foregoing *Conservator's Handbook* with my client.

Signed this _____ day of _____, 20_____

Attorney for Proposed Conservator

Instructions: The proposed conservator is required to review the *Conservator Handbook* with his/her attorney prior to the hearing on the petition to appoint a conservator so that the petitioner may have a basic understanding of the duties and responsibilities of becoming a conservator. This certificate, properly executed, must be filed with the Court at the beginning of the hearing.

CONSERVATOR HANDBOOK

Probate Court of Mobile County, Alabama

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

You are seeking to be appointed a 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 you are appointed and, after appointment, any time 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 assets. This does not mean that your conduct will be overlooked. The bonding company may 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.

It will cost money 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.

Notification of Agencies:

Immediately after being appointed, you must notify the Social Security Administration of your appointment as conservator and establish that the payee of all Social Security benefits, if any, is correct.

You must notify in writing the three largest credit bureaus of your appointment as conservator over the incapacitated person's assets. The credit bureaus names and addresses are as follows:

1. TransUnion, LLC, 2 Baldwin Place, P.O. Box 2000, Chester, PA 19016
2. Equifax Credit Information Services, Inc., P.O. Box 740241, Atlanta, GA 30374
3. Experian Credit Reporting Agency, 475 Anton Blvd., Costa Mesa, CA 92626

You should submit copies of your notification to the Social Security Administration and the credit bureaus to the Court as proof of same.

Inventory:

After you have been appointed as a Conservator, you must determine the size and the make up of the Ward's assets that you will be protecting and preserving. You must do this by means of filing a written inventory. An interim or preliminary inventory must be filed within 45 days of your appointment. The inventory of the estate is due within 90 days of your appointment. If no additional assets are discovered after the filing of the interim-preliminary inventory, there is no need to file a second, permanent inventory. However, you should notify the Court in writing that there is no need to file a second inventory.

ALL assets of the conservatorship estate and ALL sources of income must be identified and reported to the Court in the inventory (inventories). Estate assets may be of two kinds: real property or personal property. Real property means land and improvements thereon. Personal property means all other types of property and things, such as cash, either in hand or deposited in a bank or other financial institution, stocks and bonds, certificates of deposit, motor vehicles, trailers, boats, furniture, silverware, jewelry, etc. In addition to listing all of the assets, you must provide the approximate value for each asset.

You have a CONTINUING DUTY to maintain with the Court an accurate inventory of the conservatorship estate. If additional assets are discovered or acquired after the filing of the inventory (inventories) with the Court, you are REQUIRED to PROMPTLY file an amended, updated inventory that identifies the additional assets of the conservatorship estate.

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 that you can utilize to comply with the inventory filing requirement.

Note that you are required to immediately file an amended inventory when additional assets are discovered.

Monies and Investments:

Restrictions exist regarding the manner of investing conservatorship assets. You are encouraged to consult with your lawyer before making any investment decision to insure full compliance with applicable law.

Generally, a conservatorship estate's investments must be backed (or insured) by the full faith and credit of the United States or the State of Alabama. For example, funds deposited with a bank should be fully covered by FDIC bank insurance. If the amount of assets deposited with a banking institution exceeds the FDIC customer limit at said banking institution, the conservator should deposit the "excess" funds (the amount that exceeds the FDIC insured amount) at a different banking institution.

If a Ward owns corporate stock assets or other investment assets that do not comport with Alabama's investment rules at the time the Court entered the determination of incapacity, the conservator may maintain said stock portfolio or assets in the form and manner the Ward maintained them. However, if there is a loss associated with said asset, the conservator may be determined to be liable for the loss if a reasonably prudent investor would not have maintained said asset in the form or manner the Ward maintained the asset and the fact that said investment was created by the Ward prior to the Ward's incapacity is not a mitigating factor or consideration.

It is very important for the conservator to maintain written records to document and substantiate investment decisions.

If a Ward owns corporate stock or other investment assets that do not comport with Alabama's laws regarding fiduciary investments AND said assets are *liquidated* by the conservator *after* the determination of incapacity, said assets must be invested in accordance with Alabama law.

Title to Investments:

All investments must be properly titled in the name of the conservator for the benefit of the Ward and the Ward's name should be disclosed. For example:

"Joe Doe as conservator for Zac Roe, an incapacitated person"

Bank Accounts:

After you have been appointed as Conservator, you must open and maintain a **separate** bank account for the estate funds. The account should be titled as follows: "John Doe (Conservator's name) as conservator for XYZ (Ward's name), an incapacitated person". 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 deposit the Ward's money in separate checking accounts, savings accounts, or Certificates of Deposit. If you wish to put your Ward's money into any other type of account, you should contact your attorney and/or receive permission of the Court before you do so. 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.

At the time of appointment, one of the main responsibilities of a conservator is to marshal and protect all of the Ward's assets. Special attention should be given to bank accounts in which the Ward has an interest. The Alabama Uniform Multiple-Person Accounts Act ("AUMPAA") has application to such bank accounts. The AUMPAA has application to accounts (includes but is not limited to checking accounts, savings accounts, time deposits, certificates of deposit and share accounts) held at state or federally chartered banks, trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions. The AUMPAA is codified as *Ala. Code* §§ 5-24-1, *et seq.* (1975). It should be noted that the AUMPAA does not have application to accounts maintained at stock brokerage houses.

The AUMPAA applies to accounts involving multiple persons, whether or not there are rights of survivorship associated with the accounts and accounts with "pay on death beneficiary" designations. The AUMPAA also distinguishes between persons, who by the terms of the account, have a present right, subject to request and the terms of the contract of deposit, to payment from the account other than as a beneficiary or agent, and agents, who are persons who do not have a present right to payment from the account, but are authorized to make account transactions for a party to an account.

Ownership During Lifetime

Ala. Code § 5-24-11(b) (1975) provides that during the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absences of proof otherwise, the net contribution of each is presumed to be an equal amount.

Ala. Code § 5-24-11(c) (1975) provides that an account having a payment on death designation has no right to sums on deposit during the lifetime of any party to the account.

Ala. Code § 5-24-11(d) (1975) provides that an agent in an account with an agency designation has no beneficial right to the sums on deposit.

Rights At Death

Generally, on death of a party to an account, sums on deposit in a multiple-party account belong to the surviving party or parties. *Ala. Code* § 5-24-12(a) (1975). If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled to pursuant to *Ala. Code* § 5-24-11 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under *Ala. Code* § 5-24-11 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under *Ala. Code* § 5-24-11, and the right of survivorship continues between the surviving parties.

Pay On Death Beneficiary(ies)

On death of the sole party or last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. *Ala. Code* § 5-24-12(b) (1975). If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of the death of a beneficiary thereunder. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

Rights Of Creditors And Others

If the assets of the estate of a party are insufficient, a transfer resulting from a right of survivorship or pay on death designation under the AUMPAA is *not* effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children. *Ala. Code § 5-24-15(a) (1975)*.

A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under *Ala. Code § 5-24-11*, to the extent necessary to discharge the claims and statutory allowances due to the surviving spouse and children. *Ala. Code § 5-24-15(b) (1975)*.

A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child or a person acting for a child of the decedent. The proceeding must be commenced within one (1) year after the death of the decedent. *Ala. Code § 5-24-15(b) (1975)*.

Purchase of Motor Vehicles:

General

The Conservator may **not** purchase a motor vehicle without prior court approval. Special attention should be given to ensure that the motor vehicle is properly documented and titled in the name of the Conservator for the Ward. The correct title is: "John Doe (Conservator's name) as conservator for XYZ (Ward's name), an incapacitated person."

If the Court approves a motor vehicle purchase, the Conservator must promptly file a report with the Court that includes documentation confirming: title to the motor vehicle and insurance coverage for the Ward and the motor vehicle.

Minors

Motor vehicle purchase requests regarding minor Wards must address the following points:

1. The age of the minor and date of birth
2. The reason for the proposed purchase (i.e., transportation for work, school, family need, etc.)
3. Proof that the minor has a valid Alabama driver's license
4. Proof that the minor has maintained a B average in school work
5. Proof that the minor has completed a driver's education course
6. Information about how the minor and the motor vehicle will be insured, including who will pay for the insurance coverage
7. Information about how the motor vehicle will be maintained and cared for - who will pay for the same

Budgeting For Routine Household Expenses:

General

Shortly after the Conservator receives the Letters of Conservatorship, the Conservator should prepare a proposed budget for the household and living expenses of the Ward. This proposed budget should be submitted to the court for approval.

Minors

Expenditures for minors can be difficult to navigate. In Alabama *all* parents have the legal responsibility to provide maintenance and support for their children. This responsibility is joint and several in nature. The fact that one parent is disabled or deceased, does not modify the legal responsibility of maintenance and support of the other parent. The assets of a minor must be utilized in a manner that is viewed as being in the best interests of the minor. A Conservator is encouraged to obtain approval from the court *before* there are *significant* expenditures for vacations, out of town trips, sport camp activities, etc.

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 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.

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 lawyer 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 Exhibit "C" are examples 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 and have him file the appropriate petition 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 36 months. It is at this time that all of the records you have kept for the prior 36 months must be made available for review by the Court.

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. At this time, you should submit all receipts for the expenditures that you have made from the estate's funds. 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, the Conservator still must move to 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.

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 settlement with the 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 Mobile County at Post Office Box 7, Mobile, Alabama 36601. In your notice, you must give the name of your Ward and the case number. This will allow the Court to make certain that it correctly shows your change of address.

Thank you for your review of this document.

C. Mark Erwin, Judge of Probate

EXHIBIT "A"

Assets to Look for in Preparing Inventory

- + Cash on hand and 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 "C"

Sample Forms for Ledgers and Records

Attached are samples of the type 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, etc., (Such deposits should be posted or listed as an income entry in the ledger.)
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.

Sample No.2

(Income)

5. All cash receipts, refunds, dividends, interest, etc., (Such deposits should be posted or listed as an income entry in the ledger.)
6. 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).

(Disbursements)

7. All original checks or thumbnail copies drawn against the Estate's bank account. All voided checks should be listed with reasons why the checks were voided. (The respective check should be posted or listed as an expense entry in the ledger.)
8. 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).

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.

Sample No.3

A separate ledger should be kept and maintained that identifies non-cash assets in the Estate with their description, location and their value, e.g.:

10. All Certificates of Deposit and any other investment account.
11. Any pending lawsuit or litigation.
12. All real property.

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 Mobile County

Page ____ of ____

Estate of _____ Case No. _____

CASH

Date	Check No.	Payee/Payor	Reason	Income	Expense	Balance
			Page Totals ----->			

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

SAMPLE NO.2

SUMMARY

Estate of Case No. -----

TOTAL INCOME\$ _____

TOTAL DISBURSEMENTS\$ _____

BALANCE ON HAND AS OF / ____ / ____ \$ _____

PART III. BANK ACCOUNT INFORMATION

Please list below the account(s) which have been opened by you to administer estate funds and the current balances in each. Also include Certificates of Deposit, any multi-party or POD accounts of the Ward and any other investments made by you to administer this estate.

Name of Bank	Account Number	Balance

Please list all sources of income.

Income	Source	Frequency/Amount

CERTIFICATION

I the undersigned Conservator, do hereby state under oath or affirmation that the information provided above is true and correct to the best of my knowledge and belief.

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

 Notary Public
 My Commission expires: _____

 Conservator