

INSTRUCTIONS TO CONSERVATORS OF INCAPACITATED ADULTS

(Revised October 2012)

A Conservator of an adult declared incapacitated by an Order of the Circuit Court has a duty to administer the assets of the incapacitated adult in accordance with the laws of the Commonwealth of Virginia. Most of the sections of the Virginia Code dealing with conservatorship matters can be found in Title 64.2.

The following is a very general outline of matters of which you as a Conservator of an incapacitated adult will need to be aware in order to properly administer the incapacitated adult's estate.

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I. DUTIES AND POWERS OF A CONSERVATOR

A. A Conservator shall take care of and preserve the estate of the incapacitated adult (both personal property and real property) and manage it to the best advantage of the incapacitated adult.

1. At all times, a Conservator shall exercise reasonable care, diligence and prudence, and shall act in the best interest of the incapacitated adult.

2. To the extent known, a Conservator shall consider the expressed desires and personal values of the incapacitated adult.

3. A Conservator may use income and principal to provide for the care of the incapacitated adult. A Conservator may also provide for the legal dependents of the incapacitated adult.

4. A Conservator may pay compensation to any Guardian of the incapacitated adult.

5. A Conservator shall, to the extent feasible, encourage the incapacitated adult to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage the estate and his financial affairs.

B. Unless limited by the order of the Court, a Conservator has the powers set forth in Virginia Code Sections 64.2-2021, 64.2-2022, and 64.2-105. Some of those powers are as follows:

1. To ratify or reject a contract entered into by the incapacitated adult;

2. To pay any sum distributable for the benefit of the incapacitated adult by paying the sum directly to the provider of goods and services or to any individual or facility that has assumed the responsibility for the care and custody of the incapacitated adult;

3. To maintain life, health, casualty and liability insurance for the benefit of the incapacitated adult or any legal dependent;

4. To execute and deliver all instruments, and to take all other actions

that will serve the best interests of the incapacitated adult;

5. To initiate a legal proceeding to revoke a power-of-attorney; or to make an augmented estate election under Virginia Code Section 64.2-302;

6. To borrow money upon such terms and conditions as the Conservator shall deem advisable; and

7. To mortgage or pledge portions of the incapacitated adult's estate to secure such loans.

C. Unless limited by the order of the Court, usually at the time of appointment of the Conservator, the Conservator has unlimited authority to sell all assets, including the power to sell real estate.

1. Be sure to review the Order appointing you as Conservator to see which, if any, requirements need to be met before you begin procedures to sell any real property.

2. The Court may require the Conservator to consult with the Commissioner of Accounts and Guardian prior to selling the real estate; to increase the surety on the bond; to obtain an appraisal; and/or to send notice to interested parties. Where these requirements are imposed, the Conservator must report his compliance in writing to the Commissioner of Accounts before any sale can take place.

II. IDENTIFY CONSERVATORSHIP ASSETS

A. If the incapacitated adult is unable to tell you where and what his assets are, you may find it helpful to look in these places:

1. Check book registers - usually deposits will reflect the source, e.g. social security, annuities, stock dividends.

2. Old tax returns - will show names of banks and account numbers from 1099's and other investment information.

B. Determine how each asset is titled: solely owned; joint with someone (and if so, with whom, and were the funds all contributed by the incapacitated adult or what percentage was contributed by the incapacitated adult); pay on death account. (See Section III for further instructions.)

C. Vehicles - those titled in the incapacitated adult's name solely should be considered as an asset of the conservatorship.

D. Furniture - the Conservator should list the incapacitated person's solely owned furniture and furnishings and the incapacitated person's interest in jointly owned furniture and furnishings as assets under the Conservator's control.

E. Jewelry - the Conservator should list the incapacitated person's jewelry as an asset under the conservator's control. It is the Conservator's duty to make sure valuable jewelry is properly safeguarded, yet also take into consideration the incapacitated person's wishes to wear the valuable jewelry.

F. Real Estate - the Conservator has the duty to maintain the incapacitated person's real property, whether or not he has the power to sell it. If the house is owned solely by the incapacitated person, and the incapacitated person is living elsewhere, the conservator should consider a sale or seek income by renting the house. Of course, a spouse or dependent children would not be expected to pay rent. If the Conservator resides in the house, he should pay rent at the fair market value. Utility payments should not be paid from the incapacitated person's funds if the property is occupied by anyone other than the incapacitated person or his dependent family members.

III. WHOM TO NOTIFY OF YOUR APPOINTMENT

A. Send a copy of your letters of qualification as Conservator to every bank, brokerage firm, agency from which annuities are sent, and any other appropriate entity, along with a letter stating who you are, your address, and requesting that future payments be sent to the incapacitated adult in care of you as Conservator.

B. Take your letters of qualification as Conservator to the bank in which you will open any conservatorship accounts. Be sure that for the conservatorship

checking account you use a bank which returns photocopies of cancelled checks or bank statements which show the check numbers, amount, and payee.

C. If the incapacitated adult owns a car or a house, notify the insurance companies to assure future billings will be sent to you.

1. If a house is vacant, be sure to advise the insurance company of this as they may require an additional premium in order to insure a vacant home.

2. If the incapacitated adult can no longer drive a car, you may need to decide whether to cancel the insurance or change its coverage in some fashion.

IV. TRANSFER ASSETS INTO CONSERVATORSHIP NAME

A. Titles to every account or asset of the incapacitated adult should be changed from his name to **"(your name), Conservator for (incapacitated adult's name)."**

B. Do not use your own Social Security number on conservatorship assets. You should use the incapacitated adult's Social Security number.

C. Assets held jointly with the incapacitated's spouse should be split 50/50, and the incapacitated adult's 50% should be put into the Conservatorship. Likewise 50% of the income earned from joint assets after the date of qualification should be deposited into the conservatorship. However, to the extent possible, the Conservator should preserve any survivorship nature of the account by titling the incapacitated person's separate account as payable on death to the spouse. It will make your accountings much less complicated if you split these accounts immediately after your qualification.

D. Pay on death (P.O.D.) accounts/assets and transfer on death (T.O.D.) accounts/assets should be left in that form until such time as you need to use those assets for the incapacitated adult's benefit. Then withdraw funds as needed and put the withdrawals into the conservatorship checking account. Your intent should always be to maintain the character of the asset as designed by the incapacitated adult so that his wishes will be honored at his death.

E. Other jointly owned assets should be put into the Conservatorship in the percentage that was contributed by the incapacitated adult.

V. CONSERVATORSHIP CHECKING ACCOUNT

A. Choose a Virginia Bank to open the conservatorship checking account. **Use only a bank account that returns photocopies of checks or shows the check number, payee, and amount on the monthly bank statement.** If you will be keeping more than \$1,000 in the checking account, it is suggested that you use an interest bearing account, but consider any service charges related to the account.

B. It is recommended that you deposit all income for the incapacitated adult into the conservatorship checking account and that you make all disbursements from this account. You may invest assets elsewhere, but the record keeping for you will be greatly simplified if all transactions pass through this one account.

This does not mean you should not invest in certificates of deposits or buy Treasury Bills, etc. Just deposit the proceeds from matured, redeemed, or sold assets into the checking account and then purchase new assets with a check from the checking account.

C. As you are required to verify all disbursements to the Commissioner of Accounts and account for all deposits, should your bank fail to send you a statement or the cancelled checks anytime during the year, call them as soon as you are aware of the situation. Delaying your request for missing statements or cancelled checks may result in service charges by your bank.

VI. INVENTORY OF ASSETS

A. Virginia Code Section 64.2-1300 requires every Conservator to file an Inventory of the incapacitated adult's assets within four months from the date of qualification.

B. The Clerk will have given you an Inventory form at the time of your qualification which includes detailed instructions for completing the form. You

may also download forms from the Virginia State Supreme Court website (www.courts.state.va.us).

C. Use exact figures for your Inventory valuations. Do not round figures. Use the beginning values as of the date of qualification, not the value as of the day you complete the Inventory.

D. Inventories must be printed legibly in black or blue pen or typed, and signed by each Conservator who qualified.

E. You must submit the fully executed Inventory form, **in duplicate**, with the appropriate filing fee to the Commissioner of Accounts office. The Clerk will have given you a filing fee schedule at the time you qualified.

F. Inventories may be filed by mail or in person at the Commissioner of Accounts office if you make an appointment ahead of time. An appointment can sometimes be made with as little as one day's notice.

G. Each Conservator must supply the Commissioner of Accounts with his telephone numbers and complete, current street address. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each Conservator to keep the Commissioner of Accounts apprised of a current street address.

VII. ACCOUNTINGS

A. Virginia Code Section 64.2-1206 requires every Conservator to file accounts of the assets of the incapacitated adult's estate.

B. The Clerk will have given you an Account form which must be used and instructions for completing the form at the time of qualification. You may also download forms from the Virginia State Supreme Court website (www.courts.state.va.us).

C. The First Account should cover a four month period, beginning on the date of the Conservator's qualification. This account must be filed with the Commissioner of Accounts within **six months** from the date of qualification. For example, if the Conservator qualified on January 10, 2012, the First Account

would cover the period January 10, 2012 through May 10, 2012, and it would be due on July 10, 2012.

D. Second and subsequent accounts are to cover 12 months beginning with the ending date of the prior account, and are due within 16 months from the ending date of your prior account. For example, if the First Account ended May 10, 2012, then the Second Account would end May 10, 2013, and would be due by September 10, 2013. However, you may end your account on any day of the month, so that instead of ending it May 10, you may end it May 31.

E. A Final Account by a Conservator is filed upon the death of the incapacitated adult or upon entry of a Court Order restoring the incapacitated adult's competency.

F. Every accounting must be filed **in duplicate** and must be accompanied by the following:

1. Original and one copy of the account signed by each Conservator who qualified.
2. A check payable to the Commissioner of Accounts in the appropriate amount for the filing fee. The Clerk will have given you the filing fee schedule at the time you qualified.
3. Bank photocopies of cancelled checks. A bank statement or brokerage statement showing the date, check number, the payee, and the amount will also be accepted. Statements are required to document bank fees and electronic debits. **Vouchers must be submitted in the same order as the disbursements appear on the accounting.** Vouchers do not need to be filed in duplicate.
4. A copy of the signed settlement sheet on any sale of real estate.
5. The broker's statement to support any sale of stocks or other securities.
6. Verification of each asset that remains on hand as of the end of the account period:

a. For cash accounts, a statement from the financial institution, covering the ending date of the accounting and reconciled to agree with your accounting, must be provided. For a certificate of deposit, if there is no statement available, the original certificate must be provided, or a letter from the issuer verifying the existence of the certificate as of the ending date of the accounting and stating the balance of the certificate may be provided.

b. Brokerage account statements should be supplied to verify stocks, bonds, and other securities or funds held. If you hold securities in certificate form, you must exhibit the original certificates to the Commissioner of Accounts or provide a statement from a bank officer certifying that the original certificates of each security listed were exhibited to the bank officer on or after the ending date of the accounting.

c. Titles for cars, boats, etc., should be exhibited. Jewelry and furnishings, if carried as assets under the Conservator's control, can be supported by a statement from a disinterested third party certifying the existence and the location of said assets. The statement by the third party should include his printed name, address and daytime phone number.

d. Original notes must be exhibited unless an agency is handling the collection of the notes. In those instances a statement from the collecting agency certifying the identity of the holder and the principal balance as of the ending date of the account will be accepted.

e. Copies of K-1 forms from the tax returns may be used to verify any partnership interests.

f. Where the market value of the asset is not equal to the carrying value, show the market value in parentheses within the asset description or list all market values in a separate column from the carrying values.

7. A final account must show ZERO assets on hand. No assets may be held in escrow by the Conservator for any reason whatsoever.

a. Any assets remaining at the termination of a conservatorship for an incapacitated adult should be delivered to the qualified fiduciary of his estate or, for pay on death accounts, to the named beneficiary (if

the incapacitated adult died) or to the person himself (if he was declared competent by Court Order).

G. All original vouchers will be returned to the Conservator or his representative after the completion of the Commissioner's audit.

H. Accountings must be printed legibly in black or blue pen or typed.

I. Accountings may be filed by mail or in person at the Commissioner of Accounts office. You may come in to deliver an account anytime during office hours but if you need to talk with an auditor you should call for an appointment ahead of time. An appointment can sometimes be made with as little as one day's notice.

J. Each Conservator must supply the Commissioner of Accounts with his telephone numbers and complete, current street address. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each Conservator to keep the Commissioner apprised of his current street address.

VIII. DISBURSEMENTS

A. A Conservator may use principal and income for the benefit of the incapacitated adult. Virginia Code Section 64.2-2021 also permits a Conservator to contribute the incapacitated adult's funds towards the support and maintenance of the incapacitated person's spouse and/or dependent children.

1. **A Conservator may not make gifts in excess of \$100 to any one person, and not more than \$500.00 total, in any calendar year without first obtaining an Order from the Circuit Court approving such a gift.** Virginia Code Section 64.2-2023.

B. Since you must provide a copy of the cancelled check or receipt for each disbursement, it is suggested you make all disbursements from the conservatorship checking account so you will have a complete record of all such transactions.

C. Costs of maintaining an incapacitated adult's real property are properly paid from the conservatorship funds.

D. If you must use cash to pay for something, obtain a cashier's receipt or a signed receipt for it. You may find it convenient to pay occasional, small expenses yourself and then write a conservatorship check to yourself for reimbursement periodically. Be sure to keep receipts for expenses to be reimbursed to submit with your accounting.

IX. INVESTMENTS BY CONSERVATORS

A. A Conservator is charged with the investment of funds under his control, and he must make such investments within four months from the time he collects such funds. (Virginia Code Section 64.2-1501)

B. Virginia Code Section 64.2-1502 provides a listing of securities in which a Conservator may invest. Some examples of approved investments are bonds, notes and other evidences of indebtedness of Virginia, a Virginia county, a Virginia city, or the United States as well as savings accounts, time deposits or certificates of deposit in banks, savings institutions, or credit unions authorized to do business in Virginia that are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

C. For investments not listed in Virginia Code Section 64.2-1502, investments must be reasonable and proper under all of the circumstances.

D. It is recommended that a Conservator use Virginia banks for conservatorship accounts. This is suggested in case the Conservator cannot complete the administration of the incapacitated adult's estate due to his own death, removal, or other reason. A substituted Conservator would be less inconvenienced in recovering the assets in Virginia than in some other state or the District of Columbia, resulting in less disruption to the administration of the incapacitated adult's estate.

E. Virginia Code Section 64.2-1415 sets out the liability of fiduciaries regarding loss of assets.

F. A Conservator may **not** invest conservatorship monies in unsecured

notes or buy real estate or lend money to himself.

G. Be sure to title all investments properly, i.e. "**[Your name], Conservator for [Incapacitated Adult's Name].**"

H. Do not make any conservatorship asset joint with you or anyone else. The conservatorship funds belong only to the incapacitated adult and must be listed with the Conservator's name and title. Commingling funds results in confusion, especially when one party dies. See Section IV regarding existing joint accounts.

X. ESTATE PLANNING

A. Virginia Code Section 64.2-2023 permits the Court to authorize a Conservator, upon Petition to the Court, to make gifts and to disclaim property on behalf of the incapacitated adult.

1. Without court approval, the Conservator may make a gift, **not to exceed \$100 to each donee in a calendar year and not to exceed \$500 in total gifts per calendar year**, if the Conservator determines that the incapacitated adult had a three year history of making similar gifts.

B. During the incapacitated adult's lifetime, a Conservator is permitted to arrange for the ward's funeral and burial by executing a preneed funeral contract. Before you purchase a preneed funeral/burial plan, be sure the funeral home's contract meets the requirements of Virginia Code Section 54.1-2820.

XI. COMPENSATION FOR CONSERVATORS

A. Virginia Code Section 64.2-1208 allows a "reasonable compensation" to a Conservator for services rendered in the administration of a conservatorship. There is no specific definition of "reasonable compensation", but, absent unusual circumstances, the Commissioner would expect to allow an annual fee based upon the following guidelines:

1. Income - 5% of all non-investment receipts (Social Security, retirement payments, etc.) realized during each accounting period. No compensation is

allowed on receipts such as interest, dividends, capital gain distributions, nor on capital gains on sales.

2. Principal - A fee based upon the market value of the assets brought forward from the Inventory (for a First Account) or from the prior account (for Second and subsequent Accounts) in accordance with the following schedule:

First \$500,000	1% (.01)
Next \$500,000	3/4 of 1% (.0075)
Balance over \$1,000,000	1/2 of 1% (.005)
Balance over \$10,000,000	Prior consultation with Commissioner required

B. Special Rules

1. Compensation should be pro-rated when the required accounting is for a period of less than twelve months. When a Conservator is succeeded by another, the annual compensation must be pro-rated.

2. Where the Conservator hires an attorney or accountant to perform the duties of the Conservator, those fees shall be deducted from the compensation due the Conservator. Note that this does not apply to fees paid to attorneys or accountants for tax work or litigation or other legal services necessary for the orderly administration of the conservatorship.

3. The Commissioner may reduce the allowable fee in exceptional circumstances. The Commissioner may also increase the allowable fee in exceptional circumstances upon the request of the Conservator. Factors to be considered would be the nature of the assets, the character of the work, the difficulties encountered, the time and expertise required, and the results obtained.

4. Where there are co-Conservators, one fee will be divided equally among them, unless they agree among themselves on a different division.

XII. SURETY BOND COVERAGE

A. The Court will determine the penalty of the personal bond and whether surety on the personal bond is required in the Court Order appointing the Conservator. (Virginia Code Sections 64.2-1410-1411 and 64.2-2018)

B. The surety bond is set at an amount sufficient to cover the assets in the hands of the Conservator as of a specified date, plus 12 months worth of anticipated income.

1. The Commissioner of Accounts must report to the Court if the surety bond is insufficient. This is done after the filing of the Inventory and each Interim Accounting by a letter to the Conservator setting forth the amount of increase necessary to cover the existing assets and anticipated income. A copy of the letter is sent to the Clerk of the Court and to the insurance company.

2. Reduction of the amount of the surety bond may be requested by a Conservator when an inventory or accounting is filed which shows assets on hand, plus anticipated income, are significantly less than the current surety bond coverage.

XIII. FAILURE TO PROPERLY FILE INVENTORY OR ACCOUNTINGS

A. Should a Conservator fail to file the required Inventory or Account within the time required by law or within an approved extension period, the following actions may result:

1. A summons will be issued by the Commissioner of Accounts and served on the Conservator by the Sheriff. The summons allows the Conservator 30 days from the date of service to file the required Inventory or Account with the Commissioner of Accounts.

2. If the summons deadline is not met, the Commissioner of Accounts will make his report to the Court and request the Judge to issue a Rule to Show Cause against the Conservator. Said Rule will be served by the Sheriff, and the Conservator will be required to appear in Court to explain to the Judge why he has not filed the required Inventory or Account and why he should not be removed as the Conservator.

B. Virginia Code Section 64.2-1217 provides that Conservators who fail to settle their accounts as required by Section 64.2-1206 shall forfeit their commissions unless allowed by the Commissioner of Accounts for good cause shown.

C. Fees for the issuance of the summons and Rule, as well as any Court appearances by the Commissioner of Accounts, are charged against the Conservator personally.

D. Virginia Code Section 64.2-1216 requires the Commissioner of Accounts to send a copy of his report to the Court to the Virginia State Bar for any Conservator who is also an attorney.

XIV. TERMINATION OF CONSERVATORSHIP

A conservatorship is terminated when the incapacitated adult dies; is declared competent by the Order of the Circuit Court of Arlington County; or all funds are expended and no receipts are expected.

A. If the incapacitated adult dies and the value of the personal estate under your control as Conservator exceeds \$15,000, you should write no conservatorship checks until an Administrator or Executor has qualified on the incapacitated adult's estate. Then transfer all remaining assets to him. As Administrator or Executor, he will pay all debts, including the filing fee for your final conservatorship account and your final fee for your services as the Conservator.

If the value of the personal estate under your control as Conservator is \$15,000 or less and no one has qualified as personal representative of the incapacitated adult's estate within 60 days, and it appears that no one will qualify, the Conservator may pay the final debts of the conservatorship, the funeral and burial costs, and distribute the balance of the incapacitated adult's assets to the incapacitated adult's surviving spouse, or if there is no surviving spouse, to the distributees of the incapacitated adult or other persons entitled thereto. The distribution shall be noted in your final Conservator's account. (Virginia Code Section 64.2-2026)

B. If the termination of the conservatorship is due to regained competency, your powers as Conservator cease upon entry of the Court Order reinstating the incapacitated adult's competency.

C. File your final account after you have transferred all remaining conservatorship assets, with the filing fee and with all supporting vouchers. Be sure to obtain a signed receipt from the personal representative (death) or formerly incapacitated person (restoration of competency) to whom you transfer the assets. Itemize each asset delivered.

a. You are not relieved as Conservator until your final account is approved by the Commissioner of Accounts.

b. Send a copy of your final account to the insurance company that is providing the surety on your bond so that the company will stop billing you.