

GUARDIANS AND CONSERVATORS FOR ADULTS

A Petition for Guardianship or Conservatorship must be filed in the probate court. The said petitions are generally filed in cases where an adult ("Proposed Ward") is not mentally and/or physically competent to care for themselves or handle their affairs. Contrary to popular belief, these petitions are not always associated with seniors. In many cases there are unforeseen circumstances that occur such as an automobile accident or medical crisis that suddenly leaves the proposed ward mentally or physically incapacitated. If the proposed ward is at least 17 years and 6 months old when the petition is filed, he or she is classified as an adult for guardianship or conservatorship purposes.

The petition for guardianship or conservatorship must be filed in the proposed ward's county of residence, or in the county where they are currently located. The petition can also be filed in the county where the proposed ward owns real property. However, the county in which the proposed ward is currently located will not have jurisdiction to hear the petition if it appears that the proposed ward was moved to that county solely for the purpose of filing the petition there.

In order to file a petition for a guardianship and/or conservatorship there must be two interested persons having knowledge of the facts pertaining to the inability of the Proposed Ward to care for themselves or handle their affairs, or one interested person together with an affidavit from a physician, psychologist or licensed clinical social worker. There is an initial review of the petition by the probate judge to determine if there are sufficient facts to establish probable cause to move forward with the petition. If so, an evaluator is appointed to complete an evaluation of the Proposed Ward, an attorney is appointed to represent them, and the Proposed Ward is served with notice of the evaluation. Additionally, the spouse and all adult children of the Proposed Ward are notified of the petition. If the adult ward does not have a spouse or adult children, at least two next of kin or two friends of the Proposed Ward must receive notice of the proceedings. The court may also appoint a Guardian ad Litem to represent the best interest of the Proposed Ward. After the evaluation has been completed, a hearing is scheduled for not less than ten days after the proper notices have been served. The Proposed Ward has a right to be present for the hearing, however, their attorney may waive their right to attend. At the conclusion of the hearing, the court will grant the petition if it is determined to be in the best interest of the Proposed Ward. If the petition is granted, the Proposed Ward is then referred to as the Ward.

There are times when it may be detrimental to an adult to wait for the interested parties to receive notice that a petition for guardianship has been filed and to allow the ten-day waiting period to expire. When faced with these circumstances, ~~a petitioner may file for an emergency~~ guardianship. An emergency guardianship will only be granted if the facts support the need for a guardian and establish an immediate and substantial risk of death or serious physical injury, illness or disease to the Proposed Ward. In the interest of providing immediate protection for the Proposed Ward, an emergency guardian may be appointed even before any of the notices have been served. If the petition is granted, an emergency guardian will be appointed for a limited period of time until a regular petition for guardianship can be heard.

While the guardian focuses on the Ward's healthcare, general well-being, place of residency, care and support needs, the conservator's primary duties consist of inventory and asset management. The conservator is required to file the first Inventory and Asset Management Plan within two months of the date he or she is appointed, and file subsequent reports annually listing all real property, income, accounts, debts and liabilities of the Ward. The conservator must also establish a budget, based upon the actual needs of the Ward, for the expenses and management of the Ward's assets. The Ward's funds must be maintained completely separate from the conservator's funds or accounts, and the conservator shall only use the income for the Ward's health, care, support, education and welfare. The conservator shall not spend more than the income of the Ward, or sell, encumber, or gift, any real or personal property of the Ward without Court approval. Investing the Ward's funds in legal investments, as defined by Georgia law, is allowed.