

Responsibilities of the Conservator

We've learned a guardian is responsible for an incapacitated person's personal affairs and decisions, and a conservator is responsible for the person's money and property. In this video, we will talk about a conservator's duties. Just like a guardian, a conservator has responsibilities to both the incapacitated person and the court. A conservator must follow what's called the "prudent person" standard in handling an incapacitated person's money and property. To bring it all together, we will give you an outline of the four basic duties of a conservator.

The first thing to remember is that a conservatorship involves three parties: you, the person you are conservator for, and the court that appointed you. In Alabama, chances are you have been appointed by a county Probate Judge. Always, always pay attention to the court's orders, Letters of Conservatorship, and any other papers the court sends you. There are certain minimum things that are required by Alabama law, like periodic accountings, but the Probate Judge can ask for more. The judge may also have specific deadlines and instructions for filing paperwork, like the accounting.

The court's orders will also tell you what you can and cannot do with the person's money. In Alabama, a conservator's authority is divided into two categories: things you can do without prior court approval, and things you must get court approval to do. For example, you can, without court approval, invest and reinvest the person's money. But, you must get prior approval from the judge to sell or dispose of the person's house or land. We can't, in this video, go over every transaction that requires approval. Start by reading the court's orders, Letters of Conservatorship, and anything else the court sends you. If you are unsure if you can do something, you should consult with your lawyer.

For any action you take, you should follow the *prudent person* standard. For example, you should be careful when investing and reinvesting the incapacitated person's money. You are charged with the same duty of care owed by any prudent person dealing with the property of another. You have a duty to manage the person's estate effectively, and to exercise due diligence. For example, you should be diligent in collecting money you know is owed to the incapacitated person and paying their bills on time.

To pull all of this together, let's outline the four basic duties of a conservator. These can be found in a guide published on our website called "Managing Someone Else's Money: Help for Court-Appointed Conservators in Alabama."

Suppose you are appointed as Martin's conservator. The first duty is to always act in Martin's *best interests*. You should weigh the benefits and risks of any action you are taking on Martin's behalf. You may need to get advice from professionals including financial advisors, accountants, and lawyers. But don't forget Martin. Ask him what he wants. Consider his preferences and what he would do if he were able. You need to set aside your own interests and those of other people. If you don't, that's called a *conflict of interest*. You have a duty to avoid conflicts of interest, so always focus on Martin's interests.

The second duty is to manage Martin's money and property and carefully. This goes back to the *prudent person* standard. The first thing a prudent person would do is get a handle on Martin's property. Make an inventory of what Martin has; for example, bank and retirement accounts, investments, insurance policies, house, land, vehicles, and personal possessions. Get an idea of

what Martin owes in credit card bills and loans. And see if anyone owes Martin money. Doing a complete inventory is not just a good idea; it is required by Alabama law. You will need to file an inventory with the court within 90 days of your appointment.

The third duty is to keep Martin's money and property separate from your own. You should open a new, FDIC-insured checking account in Martin's name with you listed as conservator. This is sometimes called an "estate" account. Deposit all of Martin's income into this account. None of yours. Pay all of Martin's bills and expenses out of this account. None of yours or someone else's. You should also keep title to Martin's property in his name. Consult with your attorney if you have questions about how Martin's bank accounts and property should be titled.

The fourth duty is to keep good records and report to the court. Doing everything through Martin's separate estate account will really help in this regard. You will have bank statements showing all of his deposits and expenses. Use the account debit card for purchases, and whenever you need to, write checks so that you have check images. Avoid cash withdrawals. Beyond the bank records, you might want to keep a ledger of income and expenses. For larger or hard to explain purchases, you can keep receipts and notes with the ledger. The bottom line is you must be able to provide documentation and report to the court when needed. In Alabama, a conservator is required to submit an accounting to the court at least once every three years.

In the next and final video of the series, we will discuss when a guardianship or conservatorship can be modified and ends.