

Conservatorships

Prepared by:
Brian R. Jenney
Edward M. Nahhat
Kemp Klein Law Firm



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CONSERVATORSHIPS

A. Appointment of a Conservator

First, we start with the location of the prospective ward and the court's jurisdiction. Probate court jurisdiction over the appointment of a conservator derives from **MCL 700.5402 (a)**. This statute is a mirror of the standards for jurisdiction over guardianships, as set forth in MCL 700.5301(b)

MCL 700.5402 (a).

(1) The court has jurisdiction over the appointment of a conservator or the issuance of a protective order in relation to an individual's estate and affairs under this part if any of the following apply:

- (a) The individual for whom a conservator or protective order is sought resides in this state.
- (b) The individual for whom a conservator or protective order is sought is present in this state and has a significant connection to this state.

(2) In determining if the individual for whom a conservator or protective order is sought has a significant connection to this state under subsection (1)(b), the court shall consider all of the following factors:

- (a) The wishes of the individual.
- (b) The location of the individual's family and other interested persons.
- (c) The length and time the individual was present in this state and the duration of any absence.
- (d) The location of the individual's property.
- (e) The extent to which the individual has ties to this state, such as voting registration, state tax return filing, vehicle registration, driver license, social relationship, and receipt of services.
- (f) Any other factor the court considers relevant.

MCL 700.5401 provides the statutory authority for a petition to have a Conservator appointed for a legally incapacitated individual. Procedurally, there must be a judicial finding of legal incapacity, based upon admitted or evidenced facts, and additional facts that give rise to the need for a conservator.

MCL 700.5401

(1) Upon petition, and after notice and hearing in accordance with this part, the court may appoint a conservator or make another protective order for cause as provided in this section.

(2) The court may appoint a conservator or make another protective order in relation to a minor's estate and affairs if the court determines that the minor owns money or property that requires management or protection that cannot otherwise be provided, has or may have business affairs that may be jeopardized or prevented by minority, or needs money for support and education and that protection is necessary or desirable to obtain or provide money.

(3) The court may appoint a conservator, or make another protective order in relation to an individual's estate and affairs, if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money.

(4) The court may appoint a conservator in relation to the estate and affairs of an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests a conservator's appointment.

MCL 700.5409. Unlike guardianship, a conservator is not, necessarily, a person.

(1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator as described in section 5106, to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

(g) A person nominated by the person who is caring for or paying benefits to the protected individual.

(h) If none of the persons listed in subdivisions (a) to (g) are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

(2) A person named in subsection (1)(a), (c), (d), (e), or (f) may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute. If persons have equal priority, the court shall select the person the court considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority.

Venue – Venue for conservatorships and other protective proceedings is governed by MCL 700.5403, which provides that venue for proceedings under MCL 700.5401 et seq. is (1) in the place in this state where the individual to be protected resides, whether or not a guardian is appointed in another place, and (2) if the individual to be protected does not reside in this state, in any place where the individual has property.

Venue can be changed to another county pursuant to MCR 5.128(A). Keep this court rule in mind as you can change venue for the convenience of the parties and witnesses and/or for convenience of the attorneys.

Accountings – the Conservator must prepare annual accountings and the petitions to allow accounts.

Forms:

PC 639 – Petition for Appointment of Conservator,

PC 674 – Inventory

PC 585a – Petition to Allow Accounts

PC 583 – Account of Fiduciary

PRACTICE NOTES

Remember that MCR 5.125(C)(24) defines ‘interested persons’ for a conservatorship petition.

Make sure to give thorough and complete specific supporting facts and examples in item 6 of the petition for appointment of conservator.

After appointment, assist the client with the Inventory and make sure it is filed before the due date. Send client a letter regarding the Inventory and accounting requirements.

Docket your calendar 1 month before the annual accounting is due, and send a letter to the client to gather all of the information in order to prepare the accounting.

Know the court you are in. Different courts require different items when you file your annual account.

As always, be courteous, respectful and helpful to the guardian ad litem.

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