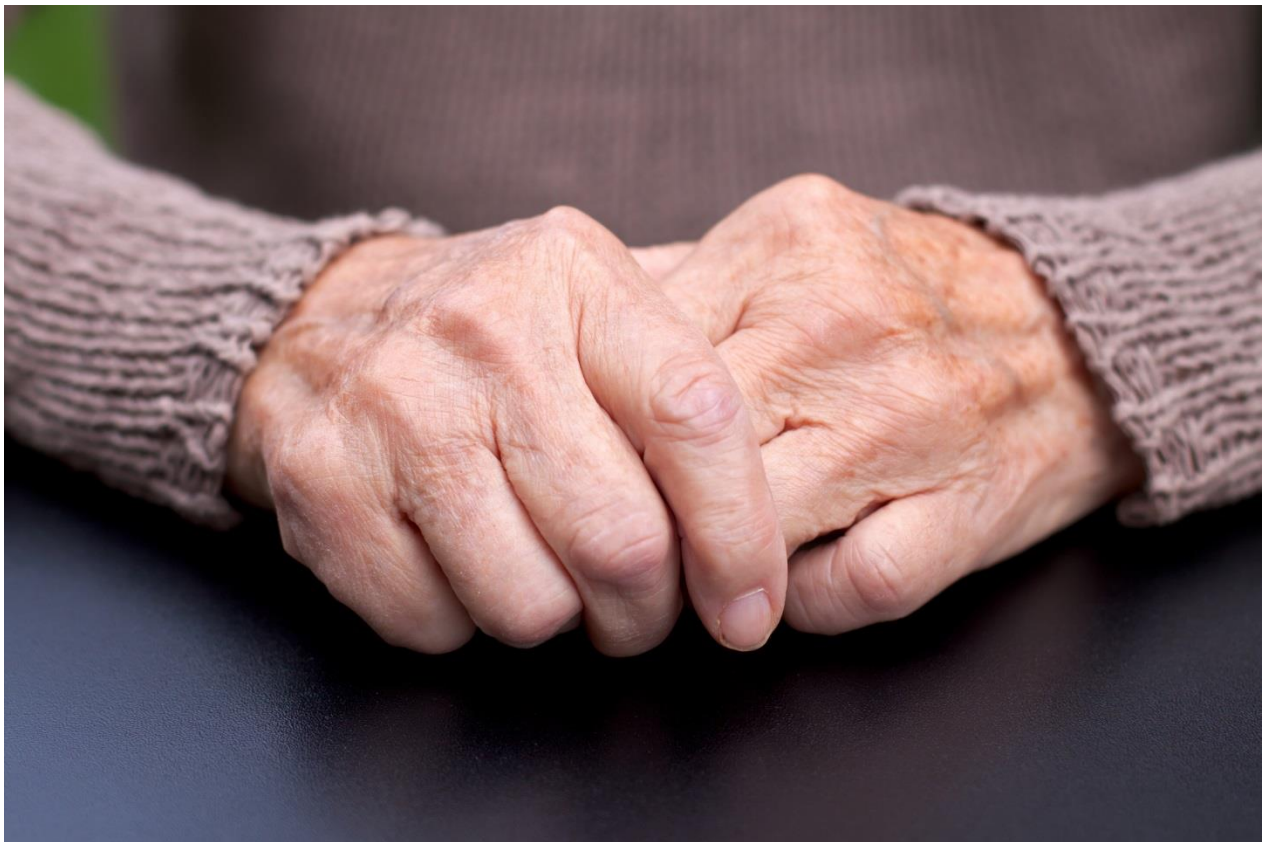


EVERYTHING YOU NEED TO KNOW ABOUT

# CONSERVATORSHIP BONDS



## *Introduction*

Being a Conservator is an important job; it isn't for the faint of heart, or those that are not dedicated to the job.

As a Conservator, you will have many responsibilities, all which are court-mandated and regulated. You will have to give regular reports to a judge to prove you are fulfilling your duties. It is often an expensive duty, requiring court-filing fees, legal fees, investigator fees, and conservator fees. And if someone feels as though you are not fulfilling your duties to the best of your ability, or neglecting or misusing assets or finances of who are you in conservatorship over, a claim might be made against you, starting a long and arduous court process.

On the other hand, though, being a Conservator enables you to care for someone who needs assistance in managing their financials or estate, a hard, but rewarding experience.

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## *The Basics*

### **What is a *Guardian*?**

A Guardian is a court-appointed individual who makes healthcare and other non-monetary decisions for someone who can no longer make those decisions on his/her own.

### **What is a *Conservator*?**

A Conservator is a court-appointed individual who manages the assets and finances of someone (called the Conservatee) who can no longer manager those on his/her own.

### **A Note on *Guardian* and *Conservator***

Sometimes the terms *Guardian* and *Conservator* are used interchangeably. In our experience, Conservators handle monetary matters, while Guardians handle the day-to-day. Some states, however, make no recognition of this difference and the terms are used interchangeably.

## *Does My Family Member or Friend Need a Conservator?*

Individuals who might need a Conservator:

- Individuals who are in a coma
- Individuals who have a mentally disability
- Individuals who have dementia or Alzheimer's
- Individuals who have just had a stroke
- Individuals who have a brain injury

If an individual has no monetary assets or income and they fall into one of the above categories, they probably won't need a Conservator and instead will only need a Guardian.

If an individual has monetary assets and has an income, they will most likely need a Conservator and maybe a Guardian too.

Generally, Guardians only handle small amounts of money (monthly stipends, social security, VA benefits, etc.) If a Guardian will need to handle more money (usually \$20,000 or more annually) then a Conservator is usually appointed.

## *Who Will The Court Appoint As Conservator?*

If the Conservatee planned ahead and signed durable powers of attorney for finances, that person won't need a Conservator because the person named in those documents can take charge.

Otherwise, the court will appoint a responsible individual for Conservatorship.

- First choice: Close family member (spouse, domestic partner, parent, or adult child)
- Second choice: Other relatives or friends
- Third choice: Specially trained attorney

## *What is a Conservatorship Bond?*

If you are appointed as Conservator, you will most likely need to get a Conservatorship Bond.

A Conservatorship Bond is a type of surety bond that promises faithful performance of your duties. Conservatorship Bonds work similar to insurance. They ensure the assets of the person you are caring for are not mismanaged or taken advantage of.

If someone feels you are not fulfilling your obligations as stated by the court, they can make a claim against your bond.

Jump to [What Happens If A Claim Is Made On My Bond?](#)

## *Who Needs a Conservatorship Bond?*

You need a conservatorship bond if you are selected as a Conservator for a minor, elderly, or disabled person. But not so quick, not all states require a bond.

Approximately 20 states require a Conservator to post a bond, 19 states require a bond which allow courts some manner of discretion in regards to when, and 12 states give the court complete discretion as to whether a bond is needed or not.

Some states do not distinguish between guardians and conservators.

Check your individual state's statutes regarding conservatorship bonds and the distinction between guardians and conservators.

- Alabama: requires bond
- Alaska: may require bond
- Arizona: requires bond
- Arkansas: requires bond
- California: requires bond
- Colorado: requires bond, unless court deems not necessary
- Connecticut: requires bond
- Delaware: may require bond
- District of Columbia: may require bond
- Florida: may require bond



- Georgia: requires bond
- Hawaii: may require bond
- Idaho: may require bond
- Illinois: requires bond (no distinction between guardian and conservator)
- Indiana: requires bond, unless court deems unnecessary
- Iowa: requires bond
- Kansas: requires bond
- Kentucky: requires bond
- Louisiana:
- Maine: requires bond if estate is more than \$25,000; may require bond if less
- Maryland:
- Massachusetts: may require bond
- Michigan: may require bond
- Minnesota: may require bond
- Mississippi: requires bond, unless waived
- Missouri: requires bond
- Montana: may require bond
- Nebraska: requires bond, unless requirements is waived
- Nevada: may require bond
- New Hampshire: requires bond
- New Jersey: may require bond
- New Mexico: may require bond
- New York:
- North Carolina: may require bond
- Ohio: requires bond
- Oklahoma: may require bond
- Oregon: requires bond

- Pennsylvania: requires bond
- Rhode Island: requires bond
- South Carolina: requires bond
- South Dakota: may require a bond
- Tennessee: requires a bond, unless waived by the court
- Texas: requires bond
- Utah: requires bond, unless court dispenses with bond for good cause
- Vermont: requires bond (no distinction between guardian and conservator)
- Washington: requires bond, unless court dispenses with bond for good cause (no distinction between guardian and conservator)
- West Virginia: requires bond, except when unnecessary
- Wisconsin: requires bond
- Wyoming: requires bond

## *The Cost of Conservatorship*

Conservatorship can be costly, not only because there are fees and costs that are incurred before conservatorship is actually established by the court, but also because there are ongoing fees and costs that continue for the life of the incapacitated individual. Then you also have the [Conservatorship Bond cost](#) itself.

### **Fees incurred before conservatorship is established:**

- Court costs for determining capacity
- Attorney fees for petition to determine capacity
- Doctor and social worker fees to examine the ward

### **Fees incurred after conservatorship is established:**

- Attorney fees for the conservator
- Attorney fees for the ward (if required by judge)
- Accounting fees for yearly report
- Court fees for yearly report hearing

## *The Cost of the Conservatorship Bond*

The amount of your Conservatorship Bond depends on the particular situation of the individual, and your state's probate bond statutes.

Generally, Conservatorship Bond amounts are determined by the value of the individual's estate and financials.

*For example, if Mary May lives in a \$500,000 estate and has a \$70,000 investment account and can no longer manage her finances, she might want Lilly May, her daughter, to become her Conservator. Lilly May will obtain a Conservatorship Bond in the amount of \$570,000 to cover all the finances and estate.*

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**You will not have to pay the full bond amount to get bonded.**

Instead, you will just pay a percentage of the bond. This is called the *bond premium*. Percentages range from 1-15% of the total bond amount and are largely based on the wealth and credit history of the applicant.

Other points of evaluation include:

- Specifics of the case
- Bond obligation

- Bond amount
- Personal credit history
- Personal net worth
- Personal assets
- Attorney involvement

*For example, going back to Lilly May, if she has exceptional credit (generally over 700), she might only pay, on average and depending on state and surety company rate filings, \$1,680 per year (typically 5% or less of the bond amount). If Lilly May's credit is less-than exceptional though, she will have to pay more. If Lilly May has no credit history at all, or if she has marginal credit, she will have a difficult time getting approved for conservatorship in the first place.*

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Get a free [Conservatorship Bond Quote](#).

## *How Can I Lower My Bond Amount and Bond Premium?*

Depending on the applicant's credit, a Conservatorship Bond can become quite expensive.

Sometimes, a Conservator might want to lower the bond amount, thus lowering the bond premium. The most common way of doing this is by restricting the assets of the person being cared for.

*For example, if Lilly May wants to lower her payment amount per year, she might only want to insure \$200,000 of her mother's estate—just enough to protect the property from being sold. Lilly May's bond amount will then decrease to \$270,000 and the premium will adjust accordingly.*

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## *How Do I Know I Am Getting the Best Price For My Bond?*

Standard surety bond rates run from less than 1% to 3%. Rates for higher-risk individuals run from 4% to 15%.

While getting the best rate for your Conservatorship Bond largely depends on you and your financial strength, you aren't the only determining factor in the game. The surety bond company you choose is a huge factor in all steps of your bonding process, all the way from applying for your bond to getting the bond approved and in your hand.

Jump to [What Makes a Surety Bond Company Great](#)

## *What Happens If Someone Makes a Claim on Your Bond?*

If someone feels as though you are not fulfilling your duties as a Conservator, they can make a claim against your bond.

Though anyone can make a claim against your bond, it takes more than just a simple phone call. There is a surety bond claim process that must be followed.

In some cases, a bond claim may be taken directly to court.



## *The Bond Claim Process*

1. Claimant completes bond claim form
  
2. Claim is filed with the surety company that issued the Conservatorship Bond
  
3. The surety company investigates the claim and evaluates its validity.
  - If claim is determined to be invalid, no further action is taken.
  - If claim is determined to be valid, the surety company will reimburse the claimant for any losses.

Note on if the claim is valid:

- Reimbursement cannot be more than the amount of your surety bond. For example, if the Conservator secured a \$10,000 bond, then no claimant can be reimbursed more than \$10,000.
- The conditions and timing of payment for a claim vary from state to state. In some states, the surety company has 60 days to pay the claimant. In other states, it is just 15 days.
- Because of the nature of surety bonds, the surety company will require the Conservator to compensate them for what they paid out to the claimant.

## *How To Avoid Bond Claims*

You should avoid bond claims at all cost for the following reasons: you are responsible for paying back the surety company for any claims they pay, your reputation is damaged, and it will be difficult for you to get another surety bond in the future, if ever.

Here are some helpful tips to avoid claims on your conservatorship bond:

### **1. Understand what your surety bond is (and is not)**

The first step to avoiding surety bond claims is to understand the language of your bond. Understanding the fine-print of your bond, including the specifics of your [surety bond indemnity agreement](#), who is protected by the bond, and what happens if a claim is made against you, are all important and vital aspects to fully understand before becoming a conservator.

Understanding what your bond *is not* is an often overlooked concept. One common misconception is that surety bond is insurance for you. This is not the case. Surety bonds do not protect you. Instead, they protect your customers, in this case, the incapacitated individual you are caring for. Make sure you are familiar with the obligations you are held liable for under your bond contract.

## **2. Know your state and federal rules and regulations**

Every state has different Conservator Bonds, different bond amounts, and different rules that apply to their bonds, such as when you can/can't cancel them. Pay specific attention to your state's bond amounts and the time requirement for cancellation of a bond. You can get slapped with a bond cancellation penalty fee if you break the terms of your bond and do not follow proper protocol for cancelling your bond the right way. [View State Bond Requirements.](#)

## **3. Know who can file a claim against you**

Any person you come in contact with during your conservatorship career can file a claim against you. That includes the state you are doing your conservatorship in.

## **4. Stick to the high road**

Probably the best action you can take to avoid bond claims is to take the high road, and stick to it all the way through. Being honest during your Conservatorship career might be harder at times, but when you think about the cost of bond claims, an honest approach is the only approach.

This means:

- Do not commingle the Conservatee's assets with your personal assets, even temporarily
- Do not include assets within your accounting that are outside your control as a conservator
- Do not dispose of personal property without giving notice

- Do not borrow from the Conservatee's assets for your own benefit, or anyone else's
- Do not continue to spend/dispose of assets if the Conservatee dies. Your authority as a Conservator ends upon date of death of the Conservatee.

You can [read more Conservator Tips.](#)

## *Where to get a Conservatorship Bond*

To get a Conservatorship Bond, you'll need to work with a surety bond company to issue your bond. Not all surety bond companies are alike though. Some have different underwriting (risk assessment) and some can charge hidden fees for processing your bond.

## *What Makes a Surety Company Great?*

- They're easy to access
- They have great rates
- They connect with diverse carriers
- They have a proven track record
- They have excellent customer service
- They work in your location
- They can work with your small or large business
- They provide your bond quickly

Get a free [Conservatorship Bond Quote](#).

## *Helpful Resources*

## *Tips for Conservators*

### **Things To Do:**

1. Submit Conservatorship report to the court in a timely manner. This includes your inventory report upon your approval of Conservatorship, and your annual accounting reports.

2. Conduct a thorough search for assets to ensure your inventory is complete. Make sure all items are accurately valued as close to the date of appointment as possible.

3. Open financial accounts identifying the Conservator and naming the Conservatee, but giving the control of the account to the Conservator.

4. Determine the monthly living expense of the Conservatee and establish a budget that maintains their lifestyle to the best extent possible.

5. Retain all receipts, cancelled checks, statements of accounts receivable, etc.

6. Provide verification of funds with your annual report.

7. File state and federal income taxes for the incapacitated person if they meet filing requirements.

8. Respond promptly to requests from court.

11. Obtain court approval before selling real estate, creating a trust, making or changing a will, or changing beneficiaries on accounts or policies.

### **Things Not To Do:**

1. Do not co-mingle the protected person's assets with your assets, even temporarily.

2. Do not include assets within your accounting that are outside your control as a Conservator.

3. Do not dispose of personal property without giving notice to the court.

4. Do not borrow from the Conservatee assets for your own benefit, or anyone else's.



5. Do not continue to spend/dispose of assets if the Conservatee dies. Your authority as Conservator ends upon date of death of Conservatee or cancellation of Conservatorship by the court.

# Conservatorship Timeline

From "Probate Conservatorship Self-Help Overview materials created for Judicial Council 2008

## Time Line & Checklist For Conservatorship

	30 days before hearing/ 15 days for ltd c'ship	1 week before hearing	4 wks after filing/ 6-8 wks for ltd conservatorship	w/in 60 days from hearing	w/in 90 days from hearing	120 days from hearing	w/in 6 months from hearing	1 Year from hearing
<b>File Petition</b>	Give Notice, Serve Citation, File Proof of Service	<b>Probate Examiner Notes</b>	<b>Hearing</b> File Orders & Letters if Appointed	File Level of Care Plan	Give Notice of Rights & file Proof of Service, File Inventory & Appraisal	<b>Review Hearing</b>	Take Orientation Class, File Proof of Attendance	File Accounting for c'ship of Estate, Court Investigator Report
<p><b>Immediately after filing:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> For limited conservatorship only: Give Notice to Regional Center and file Proof of Service (at least 30 days before hearing).</li> <li><input type="checkbox"/> All Conservatorships: Give Notice to 2<sup>nd</sup> degree Relatives (at least 15 days before hearing) and file Proof of Service.</li> <li><input type="checkbox"/> Give Notice to Veterans Administration if VA applies to proposed conservatee (at least 15 days before hearing) and file Proof of Service.</li> <li><input type="checkbox"/> Serve Citation on proposed Conservatee (at least 15 days before the hearing) and file Proof of Service.</li> <li><input type="checkbox"/> Approx. 7-10 days after filing petition expect Court Investigator visit.</li> </ul>		<ul style="list-style-type: none"> <li><input type="checkbox"/> Expect Court Appointed Attorney's visit.</li> <li><input type="checkbox"/> Regional Center assessment (for limited conservatorship only).</li> <li><input type="checkbox"/> 1 week before the hearing, check Probate Examiner notes and discuss issues with Probate Examiners. (Sometimes these notes are available only 1 day before the hearing.)</li> </ul> <p><b>At the hearing:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If there are no defects and no one objects, the Judge will make an order and appoint the conservator.</li> <li><input type="checkbox"/> If there are defects at the hearing or if someone objects, there will be a continuance. Cure the defects and address the objections before the next hearing date.</li> </ul>		<ul style="list-style-type: none"> <li><input type="checkbox"/> After Judge makes an order approving the petition and appointing the Conservator: file the Orders and Letters.</li> <li><input type="checkbox"/> Within 60 days from appointment/hearing: File Level of Care Plan for Conservatorship of Person.</li> <li><input type="checkbox"/> Within 90 days from appointment: Mail Information Notice of Conservatee's Rights and file Proof of Service.</li> <li><input type="checkbox"/> Within 90 days from appointment: File inventory and appraisal, for Conservatorship of Estate.</li> <li><input type="checkbox"/> 120 days from appointment: there will be a review hearing set, which will be vacated if you are in compliance with all the filing requirements. However, if you are not in compliance you will have to come to the review hearing and show good cause why the Court should not remove you as Conservator, sanction or fine you.</li> </ul>		<ul style="list-style-type: none"> <li><input type="checkbox"/> Within 6 months from appointment: Attend and file proof of attendance of conservatorship orientation class (not for limited conservatorship of person) (Local Court Rule)</li> <li><input type="checkbox"/> After 6 months from appointment and again 6 months later and then every Year.</li> <li><input type="checkbox"/> 1 year from Appointment: File an accounting, for Conservatorship of Estate. An accounting will be due for Conservatorship of the Estate annually and the court will set review hearings for the accountings.</li> </ul>		

## *Conservatorship Checklist*

1. Use letters of conservatorship to notify the following, if applicable:

- Banks, savings, loans, credit unions, and other financial institutions
- Creditors and debtors
- Anyone who sends the Conservatee money
- Stockbrokers and companies in which the Conservatee owns stocks or bonds
- Employer
- Insurance companies and agents
- Government agencies
- Retirement plans
- Accountant or tax return prepare of the Conservatee
- Trustees or beneficiaries
- Anyone involved in a lawsuit against the Conservatee
- The post office, if you want Conservatee's mail forwarded to you

2. Ask financial institutions for information that you might need (what accounts are in the Conservatee's name, the balance of those accounts, etc).

3. Evaluate the Conservatee's needs and draw up a conservatorship plan.

4. Make a budget for the Conservatee.

5. Prepare an inventory and appraisal within 90 days of becoming Conservator.
6. Take control of the conservatee's assets and make sure they are insured and protected
7. Collect income due to the Conservatee and apply for government benefits if possible.
8. Pay the Conservatee's bills with the Conservatee's money (this includes stocks and bonds, cars and other vehicles, and real estate).
9. Store valuables in an insured warehouse if the Conservator has no immediate need for them (furs, expensive jewelry, art, will).
10. Secure adequate health, life, and property insurance.
11. Pay taxes and file tax returns.
12. Keep all records involved in your Conservator career for at least 4 years.

13. Report to the court one year after you are appointed Conservator, and every two years after that. There are very specific accounting variables to include in your report, plus a very specific format to report them in. Check with your individual state to make sure you report properly.

## *Alternatives for Conservators*

If conservatorship doesn't seem like right fit for you, there are alternatives. Note that some alternatives require an individual to be competent, and some choices are riskier than others.

- **Revocable Living Trust:** An individual can appoint a trustee to manage his/her financial affairs through the establishment of revocable living trust. A person must be competent to establish a living trust.
- **Durable Power of Attorney for Asset Management:** A durable power of attorney delegates to an agent the power to make financial decisions/transactions on his or her behalf if he/she is unable to do so. A person must be competent to establish a durable power of attorney.
- **Joint Tenancy Property:** A joint tenancy allows either joint tenant access to the funds and decisions regarding property. This choice has significant risks because one tenant can withdraw all of the joint tenancy funds.
- **Management of Community Property by a Spouse:** A spouse who is competent may manage the community property on behalf of the incompetent spouse without the need of conservatorship. Court approval for this is necessary.

- **Establishment of Representative Payee:** A substitute payee can be appointed for an incapacitated individual who receives only government benefits (social security, VA benefits, SSI).