

Conservatorship in Connecticut

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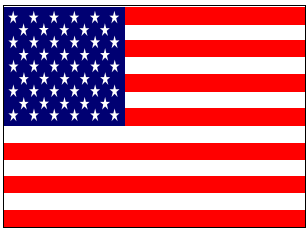
Goals

- provide an overview of history and developments in CT law
- review statutory definitions and procedure
- clarify legal obligations of petitioners and conservators
- Explore and explain alternatives to conservatorship:
 - Supportive services
 - Powers of attorney
 - Representative payee
 - Health care representative/ Advance directive

DUE PROCESS

- U.S. Constitution prohibits deprivation of life, liberty property without **due process of law**.
- Conservatorship deprives liberty and property.

How much process is due?



Definitions of Terms

Conservatorship is a legal mechanism by which the probate court of a given town appoints a substitute decision-maker for an individual who is determined to be incapable of managing his or her own 1) financial; and/or 2) personal affairs.

Conservator

- subject to oversight of the Probate Court
- appointed through hearing process; can be on voluntary or involuntary basis
- powers established and limited by statute
- court approval needed to release

Representative Payee

- Applies only to payments from Soc. Sec. Administration
- Controlled by Soc. Sec. Admin.
- Payments held if there is no payee unless Soc. Sec. admin determines person can be own payee

Attorney-in-Fact

(Power of Attorney)

- attorney-in-fact is the agent of the person who gives the power of attorney
- voluntary, private and self-directed tool
- powers established and limited by form
- Revocable
- No outside oversight

Definitions of Terms (cont)

Applicant

the individual or organization that is asking the court to appoint a conservator

Respondent

means an adult person for whom an application for involuntary representation has been filed or an adult person who has requested voluntary representation

Conserved person (formerly Ward) (effective 10/1/07, Public Act 07-116)

means a person for whom representation has been granted

Definitions of Terms (cont)

According to Connecticut General Statutes Section 45a-644

“incapable of caring for one's self” or “incapable of caring for himself or herself” means

- that a person has a mental, emotional or physical condition
- that results in such person being unable to receive and evaluate information or make or communicate decisions to such an extent
- that the person is unable, even with appropriate assistance, to meet essential requirements for personal needs.

Definitions of Terms (cont)

According to Connecticut General Statutes Section 45a-644 “**incapable of managing his or her affairs** means,

- that a person has a mental, emotional or physical condition
- that results in such person being unable to receive and evaluate information or make or communicate decisions to such an extent
- that the person is unable, even with appropriate assistance, to perform the functions inherent in managing his or her affairs, and
- the person has property that will be wasted or dissipated unless adequate property management is provided, or
- that funds are needed for the support, care or welfare of the person or those entitled to be supported by the person, and
- that the person is unable to take the necessary steps to obtain or provide funds needed for the support, care or welfare of the person or those entitled to be supported by the person.

Definitions of Terms (cont)

According to C. G. S. Sec. 45a-644

- **"Personal needs"** means the needs of a person including, but not limited to, the need for food, clothing, shelter, health care and safety.
- **"Property management"** means actions to (1) obtain, administer, manage, protect and dispose of real and personal property, intangible property, business property, benefits and income, and (2) deal with financial affairs.
- **"Least restrictive means of intervention"** means intervention for a conserved person that is sufficient to provide, within the resources available to the conserved person either from the conserved person's own estate or from private or public assistance, for a conserved person's personal needs or property management while affording the conserved person the greatest amount of independence and self-determination.

Methods of Appointment

Voluntary conservatorship:
where an individual asks the court to appoint a conservator on his/her behalf

Methods of Appointment (cont.)

Involuntary Conservatorship

- where a concerned individual or organization submits an application asking the court to appoint a conservator for a person who is believed to be incapable.

Methods of Appointment (cont.)

Temporary Conservatorship

– where an applicant asserts that there will be

“irreparable injury to the mental, physical or financial/legal affairs of the respondent if a conservator is not appointed”

immediately

Still must show incapable and that conservatorship is least restrictive intervention.

Brief History of Conservatorship in Connecticut

Prior to 1998, Connecticut law mandated appointment of a conservator in all situations in which a respondent was found incapable

Alternatives to Appointment:

Public Act 97-90 established that appointment of a conservator is no longer mandatory where:

- 1) the respondent is being cared for properly; and/or
- 2) the respondent's affairs are being properly managed.

Brief History of Conservatorship in Connecticut (cont.)

Limited, as Opposed to Plenary, Conservatorship:

Public Act 98-219 allowed courts to limit the powers of either the conservator of the person or the conservator of the estate, to include some, but not all, powers and duties.

Brief History of Conservatorship in Connecticut (cont.)

Consideration of Community-Based Alternatives:

Public Act 05-155 required conservators who are seeking to place wards in nursing facilities to first submit to the probate court a report documenting the basis for this decision, identifying community-based alternatives that have been considered, and reasons for which the ward cannot be served in a less restrictive setting.

Brief History of Conservatorship in Connecticut (cont.)

Enhanced Due Process Protections:

Public Act 07-116 (effective 10/1/07) revised statutes as follows:

- 1) stronger notice requirements;
- 2) adoption of new procedural protections (e.g. use of rules of evidence, taping of hearings);
- 3) enhanced guidance on standards for appointment of and role of conservators; and
- 4) adoption of a rebuttable presumption of limited conservatorship

POSSIBLE CONSEQUENCES OF THE APPOINTMENT OF A CONSERVATOR FOR You

- This court has received an application to appoint a conservator for you. A conservator is a court-appointed legal guardian who may be assigned important decision-making authority over your affairs. If the application is granted and a conservator is appointed for you, you will lose some of your rights.
- A permanent conservator may only be appointed for you after a court hearing. You have the right to attend the hearing on the application for appointment of a permanent conservator. If you are not able to access the court where the hearing will be held, you may request that the hearing be moved to a convenient location, even to your place of residence.
- You should have an attorney represent you at the hearing on the application. If you are unable to obtain an attorney to represent you at the hearing, the court will appoint an attorney for you. If you are unable to pay for representation by an attorney, the court will pay attorney fees as permitted by the court's rules. Even if you qualify for payment of an attorney on your behalf, you may choose an attorney if the attorney will accept the attorney fees permitted by the court's rules.
- If, after a hearing on the application, the court decides that you lack the ability to care for yourself, pay your bills or otherwise manage your affairs, the court may review any alternative plans you have to get assistance to handle your own affairs that do not require appointment of a conservator. If the court decides that there are no adequate alternatives to the appointment of a conservator, the court may appoint a conservator and assign the conservator responsibility for some or all of the duties listed below. While the purpose of a conservator is to help you, you should be aware that the appointment of a conservator limits your rights. Among the areas that may be affected are:
 - - Accessing and budgeting your money
 - - Deciding where you live
 - - Making medical decisions for you
 - - Paying your bills
 - - Managing your real and personal property
- You may participate in the selection of your conservator. If you have already designated a conservator or if you inform the court of your choice for a conservator, the court must honor your request unless the court decides that the person designated by you is not appropriate.
- The conservator appointed for you may be a lawyer, a public official or someone whom you did not know before the appointment. The conservator will be required to make regular reports to the court about you. The conservator may charge you a fee, under the supervision of the court, for being your conservator.

Should a conservator be appointed?

C.G. S. Sec. 45a-650 requires the court to consider:

- the abilities of the respondent
- the respondent's capacity to understand and articulate an informed preference regarding the care of his or her person or the management of his or her affairs
- any relevant and material information obtained from the respondent

Should a conservator be appointed? (cont.)

- evidence of the respondent's past preferences and life style choices
- the respondent's cultural background
- the desirability of maintaining continuity in the respondent's life and environment
- whether the respondent had previously made adequate alternative arrangements for the care of his or her person or for the management of his or her affairs (e.g. advance health care directive or power of attorney)

Should a conservator be appointed? (cont.)

- any relevant and material evidence from the respondent's family and any other person regarding the respondent's past practices and preferences
- any supportive services, technologies or other means that are available to assist the respondent in meeting his or her needs

Selection of Conservator

- advance designation of conservator
- court appointed individuals
- Department of Social Services:
 - individual is found incapable
 - Probate Court cannot locate alternate
 - respondent is age 60 or older
 - respondent's liquid assets are \$1,500 or less

Standards for Selection of Conservators

C.G.S. Sec. 45a-650(h) requires the court to consider:

-the extent to which a proposed conservator has knowledge of the respondent's or conserved person's preferences regarding the care of his or her person or the management of his or her affairs

-the ability of the proposed conservator to carry out the duties, responsibilities and powers of a conservator

Standards for Selection of Conservators (cont.)

- the cost of the proposed conservatorship to the estate of the respondent or conserved person
- the proposed conservator's commitment to promoting the respondent's or conserved person's welfare and independence
- any existing or potential conflicts of interest of the proposed conservator

Standard for appointment of conservator of estate

The court may appoint a conservator where it finds by clear and convincing evidence that:

- the individual is incapable of managing his/her own affairs; and
- it does not appear that the individual's affairs are being managed properly without a conservator; and
- appointment of a conservator is the least restrictive available intervention

Standard to appoint conservator of the person

The court may appoint a conservator where it finds by clear and convincing evidence that:

- the individual is incapable of managing his/her own affairs or caring for him/herself; and
- it does not appear that the individual's affairs are being managed properly or that the individual is being adequately cared for without a conservator; and
- appointment of a conservator is the least restrictive available intervention

Duties of conservator of the person

- exercise duties and authority in a manner that is the least restrictive means of intervention
- assist the conserved person in removing obstacles to independence,
- assist the conserved person in achieving self-reliance,
- ascertain the conserved person's views

Duties cons. of person(cont.)

- make decisions in conformance with the conserved person's reasonable and informed expressed preferences
- make all reasonable efforts to ascertain the health care instructions and other wishes of the conserved person
- make decisions in conformance with the conserved person's expressed health care preferences or health care decisions made by a health care representative
- afford the conserved person the opportunity to participate meaningfully in decision-making in accordance with the conserved person's abilities
- delegate to the conserved person reasonable responsibility for decisions affecting such conserved person's well-being

A Conservator May Not

- cause a respondent or conserved person to be committed to any institution for the treatment of the mentally ill

Actions that Must be Authorized by the Probate Court

- requests to make changes in investments
- requests to make gifts
- requests to sell or mortgage a home
- **Termination of a tenancy or lease, sale or disposal of any real property or household furnishings, or changing the conserved person's residence unless a court of probate finds, after a hearing that such termination, sale, disposal or change is necessary or that the conserved person agrees to such termination, sale, disposal or change**

Requirements Concerning Placement in a LTC Facility (Nursing Home)

Submit to the probate court a report documenting the basis for this decision, identifying community-based alternatives that have been considered, and reasons for which the ward cannot be served in a less restrictive setting .

Requirements Concerning Advance Directives

C.G.S. Section 19a-580e provides that except as authorized by court of competent jurisdiction, conservators:

- shall comply with health care instructions and other wishes of ward made while ward had capacity; and
- may not revoke advance directives

Requirements Concerning Advance Directives (cont.)

Further, **C.G.S. Section 19a-580e** provides:

that absent a court order to the contrary, decisions of health care representatives take precedence over that of conservators except in specific situations

Requirements Concerning Advance Directives (cont.)

Decisions of a “health care representative” **do not** take precedence over a conservator in situations in

which:

- persons are subject to Sections 17a-566 (certain convicted persons subject to psychiatric exam), 17a-587 acquittees (temporary leaves from hospitals or placement with DMR), 17a-588 acquittees (conditional release) or 54-56d (competency exams of defendants);
- a conservator is appointed under 17a-543(e), which provides procedure governing medication, treatment, psycho-surgery or shock treatment for individuals with psychiatric disabilities - for duration of hospitalization; or
- a conservator is appointed under 17a-543a – administration of medication to criminal defendants in custody of DMHAS

Limitations on Authority

- The court shall assign to a conservator appointed under this section only the duties and authority that are the **least restrictive means of intervention** necessary to meet the needs of the conserved person.

Limitations on Authority

- The court shall find by clear and convincing evidence that such duties and authority restrict the decision-making authority of the conserved person only to the extent necessary to provide for the personal needs or property management of the conserved person.

Limitations on Authority (cont.)

- The court shall make a finding of the clear and convincing evidence that supports the need for each duty and authority assigned to the conservator.

Coming attractions

- Connecticut Uniform Adult Guardianship Jurisdiction Act?

Summary

- Procedural protections
 - No jurisdiction without service
 - No evidence without finding of jurisdiction
 - Hearing on the record
 - Termination and review schedules and standards
- Required consideration of factors before determination.
- No conservatorship if there is less restrictive intervention

Summary (cont.)

Limited conservatorship the norm:

- Each duty must be explicitly ordered

- Each duty must be limited to meet the needs of the conserved person

- Each duty must be justified in the order

- No sale or disposal of real or personal property, loss of tenancy or lease, move to long term care without court permission

Deference to wishes of conserved person

- Health Care Rep

- advance directives

- choice of conservator

Duties of conservator to remove

- obstacles to and to promote self determination and independence