



HOW DO I BECOME A GUARDIAN OR CONSERVATOR?

- 1) The process begins with you, the Petitioner, filing a petition in the Circuit Court where the Respondent (the terminology used by the Code of Virginia for the incapacitated individual) resides, or resided immediately prior to becoming a patient in a hospital or a resident in a nursing home, assisted living facility, etc.
- 2) The Court will appoint a Guardian ad litem to protect the Respondent's interests. A Guardian ad litem is a lawyer who is the eyes and ears of the court during the proceedings. Among other duties, the Guardian ad litem must personally visit with the Respondent, investigate the petition, file a report with the court, and appear at all court proceedings and conferences.
- 3) A Report evaluating the Respondent's condition must be filed with the court. The Report must be prepared by a physician, psychologist, or another licensed professional skilled in the assessment and treatment of the physical or mental conditions of the Respondent.
- 4) The Respondent is entitled to a hearing before a Judge, or if requested by the Respondent, a Jury. Witness testimony may be required. If the court (or jury) determines that on the basis of clear and convincing evidence that the Respondent is incapacitated and in need of the protection of a guardian and/or conservator, the court will enter an order appointing a suitable person as such.
- 5) After the court's order is entered, the guardian and conservator must qualify in the Circuit Court Clerk's office. The Guardian must post a bond, usually without the requirement of corporate surety. Unless the Respondent's estate is very small, the Conservator typically must post a bond with corporate surety.

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