# Massachusetts Probate and Family Court

# Module 3: Getting Started as Conservator

## Welcome

Welcome to the Massachusetts Probate and Family Court's orientation program for guardians and conservators of adults.

In this training module you will learn:

* What is a conservator
* The difference between a limited and an unlimited conservatorship
* What does a conservator do
* What makes a successful conservator
* Working with a guardian
* And Getting Paid

## What is a conservator?

A conservator is a person appointed by the Court. They make financial decisions for an adult found to be a disabled person who cannot make these financial decisions for themselves.

## The difference between a limited and unlimited conservatorship

In appointing a conservator, the Court must tailor the conservator’s authority to the adult’s needs and circumstances. This is called a “limited conservatorship.” Limited conservatorships are preferred under Massachusetts law.

In a limited conservatorship, a conservator will be given authority by the Court to make only the specific financial decisions the adult cannot make themselves. For example, a conservator may be authorized to make only financial decisions about the adult’s business, real estate, or investment accounts while the adult keeps the right to manage their income and pay their expenses.

In an unlimited conservatorship (also referred to as a “plenary” or “full” conservatorship), the Court generally removes from the adult all control over their assets and income.

Whether limited or unlimited, a conservator must, as much as possible, encourage the adult under conservatorship to participate in decisions, to act for themselves, and to develop or regain the ability to manage their financial affairs.

## What does a conservator do

If you are appointed as a conservator, the Court will enter a Decree.

The Registry will then issue you a document called “Letters.” The Letters prove that the Court has given you the authority to make certain decisions for the adult.

The Decree and Letters will describe your authority and state any limitations to it. Read these documents to understand what you can and cannot do as conservator. Keep the original Decree and Letters in a safe place.

If your authority is not limited, it includes decisions about the adult's income and assets. This covers paying their bills to ensure their needs are being met.

It also includes authority to apply for MassHealth, Medicaid, or other government assistance. You may hire professionals, like an attorney or accountant, to help with your conservator duties.

*Attorney at Law Jamie Jordan:*

*“I think it can be very rewarding for people to serve as either a guardian or a conservator.   
It's feel-good work. You're making decisions and handling affairs for someone who's lost the ability to do it for themselves and although at times you may feel a bit overwhelmed, just remember that you've accepted a very important responsibility.*

*The decisions that you are making are ones that can assure that someone who cannot protect or take care of themselves, is then well cared for and protected.*

*And that is important for the protected person especially, and also for the health care providers that are trying to give them the care and treatment that they need.”*

Whether your authority as conservator is limited or unlimited, YOU MAY NOT do any of the following unless the Court has expressly authorized you to:

* Make, amend, or revoke the adult’s will
* Create an estate plan or place the adult’s assets or funds into any type of trust
* Sell the adult’s real estate
* Make gifts
* Exercise or release a power of appointment; or
* Exercise any other power listed in G. L. c. 190B, section 5-407 (d).

If you are unsure of your authority after getting your Decree and Letters, contact the Office of Adult Guardianship and Conservatorship Oversight in the Administrative Office of the Probate and Family Court. The OAGCO will help you understand what the Court has authorized you to do.

## What makes a successful conservator

You should be trustworthy and reliable. Exercise your authority only as Court ordered. Regularly check in with the adult to involve them in all of your decisions as much as possible. Make prompt decisions.

Keep all money and property of the adult in accounts separate from your own personal accounts.

Pay bills and file taxes on time. Make sure property is properly insured, if necessary. Maintain good records. Remember, you will need receipts and documents when it is time to account to the Court as conservator. Having financial skills and being organized are the keys to success.

Keep track of income and expenses. If the adult’s expenses are more than their income, you may have to apply for state or federal benefits on their behalf. You may have to sell real estate that they own. If you need to sell the adult’s real estate, you must first get the Court’s permission.

*Attorney at Law Joblin C. Younger:*

*“The question of how do you get started is often a question of how curious is the conservator?   
Where is the income? Where are the bank accounts? Is there insurance? Should there be a renewal of insurance, really kind of tracking down the items that you would expect a person in the situation of your protected person to be in and tracking everything down.”*

You cannot benefit from a financial decision made on behalf of the adult unless the Court has first approved the transaction. This is called “self-dealing” and it is against the law.

For example, if you need to sell the adult’s home, you cannot be the buyer unless you get prior approval from the Court.

Keep all information about the adult confidential. Share it only if necessary to secure services or to obtain state or federal benefits.

Complete the Inventory and Accounts and file them with the Court on time. Ask the Court to change or terminate the conservatorship if the adult’s circumstances change.

## Working with a guardian

The Court also may have appointed a guardian for the adult. The adult’s guardian makes personal decisions for them, such as health care decisions or living arrangements. If a guardian has been appointed, you must work with that guardian.

For example, you may give money to the guardian so they can pay for certain things for the adult instead of you paying for them directly. This can include the adult’s everyday expenses like food, transportation and activities.

You are accountable for all money you give to the guardian. You must report to the Court each year on your Account how much you gave and how it was used.

## Getting paid

A conservator is entitled to reasonable compensation for services related to the adult’s financial affairs.

In approving a conservator’s compensation, the Court looks at several factors. These include the reasonableness of your hourly rate for the work done and the time you billed

The Court also considers the rate for similar work by other conservators and the ratio of the requested compensation to the estate size.   
You should not calculate your compensation as a percentage of the adult’s estate.

The Court will determine if your compensation is excessive or your expenses inappropriate. If so, you may be ordered to repay the excessive or inappropriate amount(s) to the adult’s estate. This may also be grounds to remove you as conservator.

If you are an attorney acting as a conservator, you may not charge the same rate for conservatorship services that you charge for legal services.

Before you pay any compensation to yourself, ask the Court for approval.

## Resources

Remember, there are resources available to help you in your role as conservator.

Click on the icons to see the various resources available:

* Court: If you have questions, you may always ask the Court for direction.
* OAGCO: You may also reach out to the OAGCO, that is the Office of Adult Guardianship and Conservatorship Oversight in the Administrative Office of the Probate and Family Court.
* Email: We are here to help you. You can contact us by email at OAGCO@jud.state.ma.us
* Webpage: You can visit us on the Probate and Family Court webpage at mass.gov to learn more about the OAGCO and how it can assist you as a conservator.

*Chief Justice John D. Casey:*

*“Thank you for becoming a guardian or conservator for an adult who needs your help.”*

This module was supported, in part, by a grant (No. 90EJIG0023-01-0) from the Administration for Community Living (ACL), U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official ACL or DHHS policy.