

Recent Developments in Connecticut Conservatorship Law

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Goals

- review statutory definitions and procedure
- provide an overview of developments in Connecticut law
- clarify legal obligations of conservators

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 an involuntary basis
- powers established and limited by statute
- court approval needed to release

Attorney-in-Fact

- 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

Definitions of Terms (continued)

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

Ward (effective 10/1/07, Public Act 07-116 will replace this term with the term “Conserved Person”)

means a person for whom representation has been granted

Definitions of Terms (continued)

Under Public Act 07-116, effective 10/1/07,
"incapable of caring for one's self" or "incapable of caring for himself or herself" will mean:

- 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.

Statutory Definition of Terms (continued)

Under P.A. 07-116, effective 10/1/07, **"incapable of managing his or her affairs"** will mean:

- 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.

Statutory Definition of Terms (continued)

Three new definitions will be effective 10/1/07 under P.A. 07-116:

- **"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.

Statutory Definition of Terms (continued)

- **"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.

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 was no longer mandatory where:

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

Brief History of Conservatorship in Connecticut (continued)

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 (continued)

Consideration of Community-Based Alternatives:

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

Brief History of Conservatorship in Connecticut (continued)

Enhanced Due Process Protections:

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

- 1) stronger notice requirements;
- 2) adoption of new procedural protections;
- 3) enhanced guidance on standards for appointment of and role of conservators;
and
- 4) adoption of a rebuttable presumption of limited conservatorship

New Procedural Requirements

- Courts must establish jurisdiction:
 - individual is a Connecticut resident or court follows protocol
 - individual receives timely notice in the required format
 - individual has a lawyer or has knowingly refused one

New Procedural Requirements

- Courts must hold hearings in a place that will facilitate the individual's participation
- Courts must use more formal process:
 - rules of evidence
 - recording of proceedings

New Requirements: Consideration of Alternatives

- preferences and lifestyle of respondent
- alternative arrangements such as an advance health care directive or power of attorney
- any supportive services, technologies or other means that can help meet needs

New Standards for Selection of Conservators

- knowledge of respondent's preferences
- cost
- commitment to promoting welfare and independence
- conflicts of interest

New Standard for Appointment: Conservator of the Estate

Section 16 (f)(1) of P.A. 07-116 provides that 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

New Standard for Appointment: Conservator of the Person

Section 16(f)(2) of P.A. 07-116 provides that the court may appoint a conservator where it finds by clear and convincing evidence that:

- the individual is incapable of caring for him/herself; and
- it does not appear that the individual is being adequately cared for without a conservator; and
- appointment of a conservator is the least restrictive available intervention

The court **cannot** appoint a conservator where the individual is being cared for or property is being adequately managed by an attorney-in-fact, advance health care directive or other means.

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.

Obligations of Conservators

Conservators must:

- exercise duties and authority in least restrictive manner
- assist in removing obstacles to independence
- assist the conserved person in achieving self-reliance

Obligations of Conservators

- comply with health care instructions and other wishes of ward
- not revoke advance directives
- defer, in most situations, to decisions of health care representatives

Obligations of Conservators

without advance approval of the court, conservators cannot:

- terminate a tenancy or lease;
- sell or dispose of real property or furnishings; or
- change residency

Review/Termination of a Conservatorship

- a conserved person may petition for termination at any time
- if the court finds by clear and convincing evidence that the standard is still met, and that there are no less restrictive available means, it shall continue or modify the conservatorship
- if not, the conservatorship must be terminated

In summary:

- changes include significant new procedural protections (requirements for notice, jurisdiction, hearing location, legal representation, hearing on the record)

- an appointment of a conservator may only be made where there are no less restrictive alternatives, and his/her authority must be limited to meet the specific needs of the conserved person

- conservators have new duties to promote self-determination of conserved individuals