

# Instructions and Duties of a Conservator

Prepared By:

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## **Commissioner of Accounts**

The Commissioner of Accounts is an attorney at law. The Commissioner is NOT an employee of the Commonwealth of Virginia or the County of Loudoun. The Commissioner of Accounts is appointed by the Judges of the Circuit Court of the County of Loudoun, Virginia, pursuant to Virginia Code §64.2-1200.

**The expenses associated with staffing and maintaining an office and compensation to the Commissioner of Accounts for services are derived solely by the fees set by the Circuit Court of the County of Loudoun. The Office of the Commissioner of Accounts receives no funding from the court system or any branch of government.**

### **Commissioner of Accounts Contact Information:**

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Office Hours: Monday through Friday, 9:00am – 5:00pm

### **Probate Department of Loudoun County Circuit Court Contact Information:**

William L. Loy, Probate Manager – 703-777-0272  
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Mailing Address:  
P.O. Box 550  
Leesburg, VA 20178  
[www.loudoun.gov/clerk/probate](http://www.loudoun.gov/clerk/probate)  
Office Hours: Monday through Friday, 9:00am - 4:00pm, **by appointment only**

The fees paid to the Clerk of the Circuit Court when the conservator qualifies to administer a conservatorship are qualification fees required by statute and are not fees for review and audit as set forth in the Fee Schedule, which was given to you at the time of your qualification and are separate from the fees paid to the Commissioner of Accounts.

**Before making final distribution of conservatorship assets or filing the final account with the Commissioner, you should determine the final fees, costs, and assessments due to the Commissioner of Accounts.**

**It is extremely important that you read this instruction packet in its entirety before you begin administering the conservatorship.**

## Overview

These instructions and duties were prepared by the Commissioner of Accounts of the County of Loudoun and by the Loudoun County Circuit Court Clerk's Probate Department as a guideline to assist Conservators in performing the general duties required of a Conservator.

The terms "Personal Representative" or "Fiduciary" will be used in these instructions and will encompass and refer to a "Conservator". Where appropriate, the use of any gender herein shall be deemed to be or include the other gender and the use of the singular shall be deemed to be or include the plural (and vice versa).

It is the duty of a Conservator to be in full compliance with the legal requirements of all sections of the Code of Virginia that pertains to the administration of Conservatorship estates. These instructions address only the most commonly asked procedural questions and are not to be considered as advice to a Conservator concerning all the laws applicable to your duties. If you have any questions regarding your duties as Conservator, you should consult with an attorney at law; or, if tax issues are involved, an attorney at law who specializes in tax issues, a certified public accountant, or any other competent tax authority.

### Identifying and Taking Possession of Assets:

The Certificate of Qualification, which you received from the Probate Department, is your legal authority to identify and to take possession of the conservatorship assets. You need to determine if the incapacitated adult's personal property and/or real estate is owned solely in his/her name, owned jointly with right of survivorship, owned jointly without right of survivorship or payable upon death.

**The incapacitated adult's assets should be properly titled with the Conservator's name followed by "Conservator for" the name of the incapacitated adult.** (I.e. John Brown, Conservator for John Doe)

### Allowable Expenditures:

You may expend funds from principal and or/income of the conservatorship funds for the health and maintenance of an incapacitated adult.

You may make a gift of up to \$100.00 to an individual or entity on behalf of the incapacitated adult in a calendar year, not to exceed a total of \$500.00 per calendar year. You should consult Virginia Code § 64.2-2023 before making any such gift.

In order to make gifts of more than \$100.00 or to disclaim ownership of property on behalf of the incapacitated adult, you must seek court authorization (Virginia Code § 64.2-2023)

You may pay for normal maintenance costs of the incapacitated adult's real estate. These costs may include lawn mowing, plumbing repairs and appliance repairs.

If the incapacitated adult is residing in a nursing home and you are using conservatorship funds to pay utilities for the incapacitated adult's home, in which someone other than the incapacitated adult's legal

dependent(s) reside, you must be receiving rental income. If the incapacitated adult's legal dependents(s) reside in the home, please provide a statement with the account explaining the same.

Generally, a Conservator is entitled to reimbursement for out of pocket expenses incurred in attending to his/her duties, e.g., mileage, long distance phone calls, postage, and any fees associated with annual Conservatorship accounting. A Conservator is not required to expend personal funds on behalf of the incapacitated adult.

**You may not lend money on an unsecured basis. You may not lend money to yourself.**

### **Sale of Real Estate**

Unless the Court Order appointing you Conservator provides otherwise, you may sell the incapacitated adult's real estate without Court approval.

### **Record Keeping/Supporting Documentation:**

As Conservator, you have an obligation to maintain a record of all receipts and disbursements of the conservatorship funds. Be prepared to present supporting documentation to the Commissioner of Accounts during your administration of the conservatorship. Below is a list which provides you with some of the records you should retain:

- All original invoices of bills paid
- Paid promissory notes
- Original banking and brokerage statements
- Canceled checks, a bank produced check image or copy of front of check
- Signed and notarized receipts from beneficiaries for each asset distributed
- Any additional items the Commissioner may require

### **Investment of Conservator Funds**

A Conservator has the responsibility to invest the principal funds of the conservatorship in excess over the amount reasonably necessary for working funds. If the Conservator fails to invest these principal assets, the Conservator can be assessed a surcharge equal to at least the interest rate payable on money market accounts during the accounting period. Any surcharge must be paid from the personal funds of the Conservator.

**Time Requirement:** Principal funds must be invested **within four (4) months** from the time such funds come under the control of the Conservator. (*Virginia Code §64.2-1501*)

**Acceptable Securities:** Funds may be invested in acceptable securities as set forth in *Virginia Code §64.2-1502* or as permitted by a Court Order.

**Standard of care for investments:** set out in **Virginia Code, Article 2 Uniform Prudent Investor Act, §64.2-781, et seq.**, and is referred to as the “**prudent investor**” rule.

**Preserve the Value of the Assets:** The Conservator is responsible for the care, preservation, and management of the conservatorship's assets to its best advantage.

**Virginia Banks for Estate Accounts:** It is **strongly recommended** that banks located in Virginia be used for all estate accounts.

**If the Conservator fails to preserve the value of conservatorship assets because of negligence or improper conduct of the Conservator, the Conservator is charged with the lost principal and interest thereon. (Virginia Code §64.2-1415)**

**Conservatorship assets and funds cannot be combined or commingled with the personal assets and funds of the Conservator. Conservatorship assets and funds should be kept in separate accounts from the personal assets and funds of the Conservator.**

### **Medicaid**

You should obtain a copy of the Virginia Medical Handbook from the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, to use as a basic resource.

### **Change of Address**

Please report any change of address or phone number to the Clerk's Probate Department and the Commissioner of Accounts within thirty (30) days of the date of the change in residency.

**Any person who fails to inform the Clerk and the Commissioner shall be subject to a civil penalty of \$50.00.**

### **Inventory for Estate of Incapacitated Adult form (CC-1671)**

The inventory is an itemized list of the exact value of all assets under your supervision and control as Conservator. **As conservator, you are required to file an inventory with the Commissioner of Accounts within four (4) months after the day of your qualification.**

**Example:**       Date of qualification –    April 1, 2010  
                      Inventory Filing Due Date –   August 1, 2010

The inventory form is available on the web at [www.loudoun.gov/clerk/probate](http://www.loudoun.gov/clerk/probate), under 'forms'. The Inventory must be signed by each Conservator. The inventory must also be **typed or computer generated**, and an **original and one copy must be submitted** to the Commissioner of Accounts Office along with the appropriate filing fee (see the Fee Schedule<sup>1</sup>).

### **Valuation of Assets**

**Personal Property:** Use the **fair market value of the assets**. (Provide the **exact dollars and cents values; do not round figures**)

**Real Property:** Use the local real estate assessed value or appraised value. (Do not reduce gross value by outstanding mortgage, loan, lien, or other claim against the property).

**Note:** Reasonable expenses incurred in determining the values to place on estate assets, such as appraisals, are allowable as an administrative cost of the conservatorship.

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<sup>1</sup> The Fee Schedule was given to you by the Clerk at the time of qualification as Conservator. Fee Schedule can also be found at [www.lououn.gov/clerk/probate](http://www.lououn.gov/clerk/probate) under conservatorship/forms and instructions.

## **Preparing the “Inventory for Estate of Incapacitated Adult” Form (CC-1671)**

### **Part 1 - List the incapacitated person’s personal estate; tangible and intangible.**

- Joint Accounts held jointly with the incapacitated adult’s spouse should be split 50/50 and the incapacitated adult’s fifty percent (50%) should be transferred and carried as an asset under the control of the Conservator. Likewise, fifty percent (50%) of the income earned from joint accounts after date of qualification should be deposited into the Conservatorship account.
- Accounts held jointly in the name of the incapacitated adult and person or persons other than the spouse should be transferred one hundred percent (100%) to the Conservator to be carried as an asset under his/her control.
- Assets should be clearly identified, listed in reasonable detail.
- Group similar assets together such as personal effects and household property
- List articles separately that have a value of more than \$500.00 such as a collection (stamps, coins, or other collectibles)
- Un-cashed checks should be listed separately.
- Motor vehicles, boats, and personal watercraft should be listed by year, make, and model. Checking, savings, and other accounts should include the bank name, type of account, the account number (**only the last four digits**), any accrued interest, and the maturity date. Stock, mutual funds, partnerships, or limited liability companies, whether held in certificate form, book account form, or in a brokerage account, **must be listed separately** and must include name, number of shares, or percentage of ownership, and price per share or value of percentage of ownership.
- Bonds and promissory notes should be listed and each should include the issuer’s name, face amount, interest rate, and maturity date for each item.

### **Part 2 - List the Incapacitated Adult’s Real Estate in Virginia, over which you, as Conservator have a power of sale.**

Report each piece of real estate, street address, and city or county in which the property is located.

### **Part 3 - List the Incapacitated Adult’s Real Estate in Virginia, over which you, as Conservator, do NOT have a power of sale.**

Report each piece of real estate, street address, and city or county in which the property is located.

### **Part 4 - List the Incapacitated Adult’s Non-Virginia Real Estate.**

The Conservator should report all of the incapacitated adult’s real estate or partial interest in real estate not situated in Virginia that are assets of the conservatorship, whether or not the property is located in the United States.

### **Part 5 - List the Incapacitated Adult’s legal or equitable ownership**

The Conservator should list any real property or personal property that will pass to another person upon the death of the incapacitated adult by means other than testate or intestate succession. (I.e. this is any real or personal property held with right of survivorship with another person, payable to a named beneficiary or owned with pay or transfer upon death.

### **Part 6 - List the Incapacitated Adult’s interest in any Trust.**

### **Part 7 – List the Incapacitated Adult’s rights to periodic payments from certain agencies of the U.S. government.**

## **Part 8 - List the Incapacitated Adult's rights to periodic payments from any other source.**

### **Filing the 'Inventory for Estate of Incapacitated Adult' form with the Commissioner of Accounts Office:**

- Date and sign the Certificate of accuracy and completeness on page 3 (**All** Conservators are required to sign)
- Write a check for the appropriate Inventory filing fee, see Fee Schedule<sup>2</sup>
- Make at least two (2) copies of the signed Inventory; 1 for your records, and 1 for the Commissioner of Accounts Office to be filed with the original signed inventory.

### **Mail ALL of the items listed below to the Commissioner of Accounts Office:**

- The completed and original signed Inventory form
- One copy of the completed and signed Inventory form
- Payment for the Inventory Filing Fees (see fee schedule)

### **Mail to: Commissioner of Accounts, 4 Cornwall Street, N.E., Leesburg, VA 20176**

If, after filing the Inventory, additional assets are discovered, or if errors are found that increase the total estate assets by **more than \$25,000 over the Inventory Value**, an Amended Inventory must be filed with the Commissioner of Accounts within four (4) months from the date of discovery of the additional assets or the discrepancy.

However, if the after discovered assets or errors are **less than \$25,000**, an Amended Inventory is **not** required and the adjustment(s) can be made on the First Account for the estate.

### **Account for Incapacitated Adult Form (CC-1682)**

An accounting is a financial report showing how you, as Conservator, are managing the assets of the conservatorship. Your first accounting as Conservator is required by law to file with the Commissioner of Accounts within six (6) months after the date of qualification. This first account must cover the first four (4) months of your conservatorship (Virginia Code §64.2-1305). When applicable, second and subsequent accountings are due sixteen (16) months after the date of the prior account, and should not cover more than a twelve (12) month period.

<b>Example First Account:</b>	Date of Qualification - April 30, 2010
<b>Due Date:</b>	October 30, 2010 (6 months from 4/30/10 date of qualification)
<b>Time period accounting covers:</b>	April 30, 2010 to August 30, 2010
<b>Example Subsequent Account:</b>	Ending date of last Account - August 30, 2010
<b>Due Date:</b>	December 30, 2011 (16 months from end date on last account)
<b>Time period Accounting covers:</b>	August 30, 2010-August 30, 2011(12 months only)

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<sup>2</sup> Fee Schedule can also be found at [www.lououn.gov/clerk/probate](http://www.lououn.gov/clerk/probate) under conservatorship/forms and instructions

**You must provide original documentation to corroborate with all receipts and disbursements** on the accounting form, together with the original and one copy of the signed “Account for Incapacitated Adult” form. This documentation includes, but is not limited to, the following:

- **Bank statements**
- **Broker’s statements**
- **HUD-1 settlement statements**
- **Billing statements or invoices for each disbursement**
- **Canceled checks or a bank produced check images or a copy of the front of the check**

**“Account for Incapacitated Adult” Form (CC-1682)**, is available on the web at [www.loudoun.gov/clerk/probate](http://www.loudoun.gov/clerk/probate), under ‘forms’. The Account form **must be signed by each Conservator**. The Account must also be **typed or computer generated**, and a **signed original and one signed copy** must be submitted to the Commissioner of Accounts Office, along with the **appropriate filing fee**. (See Fee Schedule<sup>3</sup>) Also, be sure to **number each page in sequential order**.

### **Valuation of Assets:**

As Conservator, you must prepare applicable exhibits before you can prepare the account summary.

**Carrying Value** is the value established when the asset was acquired, that is, the value of an asset as reported on the Inventory; or, the cost of a new asset on the date of purchase.

**Current Market Value** is the value of an asset if the asset were sold as of the date of the end of the accounting period. **Note:** Some assets such as bank accounts, certificate of deposits, and money market funds will have the **same carrying and current market value**.

### **Preparing the “Account for Incapacitated Adult” Form (CC-1682)**

#### **1. Beginning Assets**

If filing a FIRST account, itemize the beginning assets from Parts 1, 2 and 5 of the Inventory for Estate of Incapacitated Adult form that you filed four months after you qualified before the Clerk. Include the full description of each asset and the carrying value and market value.

If filing a second or subsequent account, itemize the total assets on hand at the end of the prior accounting period, including the full description of each asset and the carrying value and market value.

**The TOTAL of the beginning assets must be entered on line number ‘1’ on the Account for Incapacitated Adult Form (CC-1682)**

#### **2a. Receipts from Social Security, SSI, Veteran’s or other Federal Benefits:**

Itemize chronologically all receipts from on this line and list the total of the receipts on this line.

#### **2b. All other receipts**

Itemize chronologically all interest, dividends, gross rental income, refunds, and any other income received during the accounting period by account. For example, show each quarterly dividend from XYZ Stock rather than a lump sum for the year.

**The TOTAL of the receipts must be entered on line number ‘2b’ on the “Account for Incapacitated Adult” Form (CC-1682).**

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<sup>3</sup> Fee Schedule can also be found at [www.lououn.gov/clerk/probate](http://www.lououn.gov/clerk/probate) under conservatorship/forms and instructions

### 3. Gains on Asset Sales

**For securities sold by a broker**, show the date of the sale, the name of security, the total number of shares, the total number of shares sold, the total carrying value, the gross sales price and the net gain.

**For real property sold**, show the date of the sale, property description, to whom sold, total carrying value, gross sales price, and the net gain. Itemize the cost of sale from the settlement statement under disbursements. (Recordation fees, taxes, title, etc).

**For miscellaneous items sold**, show date of sale, description, name of purchaser, total carrying value, gross sales price, and net gain.

**The TOTAL of the net gains must be entered on line number '3' on the "Account for Incapacitated Adult" Form (CC-1682).**

### 4. Adjustments

Itemize any additional **after-discovered** assets under \$25,000.00:

Itemize **corrections** to assets previously reported:

Itemize **mergers** and **name changes of securities** and **stock splits** showing the **effective date** and any **changes in the number of shares**.

Itemize **acquisition** of additional **principal assets**:

Itemize shares acquired from **reinvested dividends** showing each reinvestment and the amount of stock purchase:

**The TOTAL of the net adjustments must be entered on line number '4'.**

### 5. Total of 1, 2b, 3 and 4

The total dollar amount of line #'s **1, 2b, 3, and 4** must be inserted on line number '5' of the account form.

### 6. Disbursements

Itemize chronologically all disbursements by date, check number, payee, and the purpose of disbursement, including any expense for sale of real property as reflected on HUD-1 settlement statement.

**The TOTAL of the disbursements must be entered on line number '6'.**

**NOTES: A canceled check or a bank produced check image or a copy of the front and back of the check AND a signed invoice or receipt from each payee must be provided for each disbursement and must be organized chronologically by account.**

**If a reimbursement is made to a third party for expenses paid on behalf of the conservatorship, you must provide an invoice or receipt for said expense and the third party's canceled check or credit card statement verifying payment.**

### 7. Losses on Asset Sales

**For securities sold by a broker**: show the date of sale, the name of security, the total number of shares, the total number of shares sold, the total carrying value, the gross sales price, and the net loss.

**For real property sold**: show the date of the sale, the property description, to whom sold, the total carrying value, the contract/gross sales price, and the net loss.

**For miscellaneous items sold**: show the date of sale, the description, to whom sold, the total carrying value, the gross sales price, and the net loss.

**The TOTAL of ALL of the NET LOSS must be entered on line number '7'.**

## 8. Distributions (final account only)

Itemize each distribution by date with a description and value of the assets distributed.

**The TOTAL value of the distributions must be entered on line number '8'.**

### Notes:

A **signed and notarized receipt from each distributee** must be provided acknowledging receipt of each item of tangible personal property distributed and the value thereof.

## 9. Assets on Hand

Itemize each asset remaining on hand at its carrying value and its market value at the end of the accounting period.

**The TOTAL of the Carrying Value must be entered on line number '9'. \*\***

**\*\*The Total of the Market Value must be entered below line number '10' (where it states:**

**\*\*Market Value of Assets on Hand)**

The Conservator will be required to provide verification of the existence of each asset. This includes bank statements, (reconciled to agree with your account balance) broker's statements, copies of K-1 forms, copies of promissory notes, Certificate of Deposit Statements, titles to vehicles and watercraft.

## 10. Total

The total dollar amount of line #'s **6, 7, 8, and 9** must be inserted on line number '10' of the account form, **AND** this total **MUST equal** the total listed on **line number '5'** of the account form. Lines 5 and 10 must match to the penny.

**When filing the 'Account for Incapacitated Adult' form, be sure to:**

- Date and sign page 1 (All Conservators are required to sign)
- Write a check for the appropriate Account filing fee (see fee schedule<sup>4</sup>)
- Be sure to number each page in sequential order.
- Make at least two (2) copies of the signed Accounting; 1 for your records, and 1 for the Commissioner of Accounts Office.

**When ready to file, mail ALL of the items listed below:**

- An Original complete and executed Account for incapacitated adult together with an itemized list for each figure on the account and stated supporting documentation.
- One copy of the completed Account form together with an itemized list for each figure on the Summary Form.
- Payment for the Account Filing Fees (see fee schedule)

**Mail to:** Commissioner of Accounts  
4 Cornwall Street, N.E.  
Leesburg, VA 20176

## Termination of Conservatorship

Upon the death or restoration of competency of the incapacitated adult, the powers of the Conservator cease. You have no authority to make any further disbursements or take any other actions with regard to the former Conservatorship assets, including funeral expenses or the final Conservatorship account/filing fee.

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<sup>4</sup> Fee Schedule can also be found at [www.lououn.gov/clerk/probate](http://www.lououn.gov/clerk/probate) under conservatorship/forms and instructions

You should file a final accounting covering the period from the prior accounting through the date of incapacitated adult's death or restoration of competency.

### **Compensation for Administration of Conservatorship**

A Conservator is entitled to "reasonable" compensation for administering an estate. (Virginia Code §64.2-1208)

The Conservator's compensation is for the **complete** handling of the administration of the conservatorship. **Compensation is not an honorarium, but it is based on services rendered by the Conservator.**

#### **Compensation Guidelines for Conservator**

**If you have any questions regarding Conservator Compensation, please contact the Commissioner of Accounts Office BEFORE YOU TAKE A FEE.**

Principal Fee (Taken annually)

1% of the first \$500,000.00

3/4% of 1% of the next \$500,000.00

½ of 1% of \$1,000,000 through \$9,999,999

Over \$10,000,000-by agreement with the Commissioner (consultation required)

AND

Income Fee (taken annually)

5% of income receipts (not including capital gains)

### **Successor Conservators**

When a Conservator is succeeded by another, the annual fees shall be pro-rated, and an additional compensation fee may be allowed, but only if the Commissioner of Accounts or the Court determines this to be appropriate.

### **Co-Conservators**

One fee will be divided equally among the Co- Conservators. The Co- Conservators may agree among themselves on a different division. In case of a dispute concerning the division of the compensation fee, the Commissioner of Accounts may hold a hearing to resolve the dispute, but only if ALL of the Conservators first agree to the use of this hearing procedure.

### **Important Notes about Compensation for Conservator**

The Commissioner of Accounts may deviate from the above compensation guideline on a case-by-case basis, if necessary, to insure that each Conservator receives "reasonable compensation" for services provided.

Fees paid to an attorney or accountant employed by the Conservator to perform duties that could be performed by the Conservator will be deducted from the compensation due to the Conservator.

"Reasonable fees" paid to attorneys or accountants for tax work, litigation, or other professional services reasonably necessary for the orderly administration of the conservatorship need not be deducted from the Conservator's compensation.

### **Bond**

When you qualified as Conservator before the Clerk, you signed a Bond guaranteeing your performance as required by law. The dollar amount of your Conservator's bond and whether the bond was secured or

unsecured was determined by the Court Order appointing you as Conservator. If there is an increase in the value of the assets under your control as Conservator the Court will require you to sign a new bond. If there is a decrease in the value of the assets under your control, you can file a motion with the Court to reduce the amount of the bond.

### **Penalties**

The Code of Virginia provides for certain penalties, if a Conservator does not properly file the required documents with the Commissioner of Accounts Office in a timely manner. **Any penalties are to be paid from the Conservator's personal assets and NOT from the assets of the conservatorship. Please reference the fee schedule provided at the time of your qualification.**

### **Late Fee**

For failure to file an inventory or proper accounting within the time required by law, the Conservator will be assessed a late filing fee.

Conservator's who fail to settle their accounts in a timely manner shall forfeit their compensation unless good cause can be shown for their delay.

### **Summons**

If the Conservator fails to respond to letters from the Commissioner of Accounts regarding the filing of an inventory or accounting, or fails to provide appropriate supporting documentation, a summons will be issued and served upon the Conservator by the Sheriff. Upon service, the Conservator has thirty (30) days in which to submit the required information and pay all assessed fees to the Commissioner of Accounts.

### **Court Appearance**

If a summons deadline is not met, the Commissioner of Accounts will report the delinquency to the Court and will request that a Show Cause Order be entered against the Conservator.

After the Court issues a Show Cause Order, the Conservator will be required to appear in the Circuit Court of Loudoun County. The Conservator will have to explain to the Judge why he/she has not complied with the law. The Court may revoke the Conservator's powers, and may also impose a fine not to exceed \$500.00.

In accordance with Virginia Code § 64.2-1216 any Conservator who is a practicing attorney at law and fails to respond to a summons shall be reported to the Virginia State Bar.

**Any fees or fines incurred because of delinquency must be paid by the Conservator, individually and personally, and cannot be paid from the conservatorship assets.**

### **Glossary**

A glossary of commonly used conservatorship terms can be found at:  
[www.loudoun.gov/clerk/probate](http://www.loudoun.gov/clerk/probate)