

Guardianship, Conservatorship and Alternatives

Key Points

- Once a child turns 18, parents are no longer guardians for the child unless guardianship is established through the courts.
- You can start planning for changes in guardianship or conservatorship six months before a child turns 18.

Any person 18 or older is legally an adult and presumed to be able to manage his or her affairs, including making decisions related to medical care, unless the court has determined otherwise. This presumption does not change when a person has a disability.

The information and resources provided here are for those who are considering becoming guardians/conservators of someone unable to exercise some or all of his/her rights or protect his/her interests.

What Is Guardianship?

A guardian is an adult who has been given legal authority by the courts to make decisions related to personal needs (medical, shelter, nutrition, clothing, residence and safety) for someone who is incapacitated and unable to make decisions for himself/herself (protected person).

Guardianship is a legal, not a medical determination. Only the court can make a person the guardian of another person. Parents are no longer guardians for their children once the children turn 18 years old, unless the parents' guardianship has been established through the courts.

The protected person will not lose the right to vote unless specified by the court.

Guardianship will continue until it is terminated, even if the guardian and the protected person do not live in the same state. Any interested adult, including the protected person, can ask the court to terminate or modify the guardianship/conservatorship.

What Is Conservatorship?

A conservator is someone who has been given legal authority by the courts to make decisions related to finances, property and real estate for someone unable to make these decisions. The court decides which areas of the estate/financial affairs the conservatorship will have responsibility for.

What Is the Difference?

A **guardian** has authority to make **personal** decisions for the protected person, whereas a **conservator** has ability to make decisions regarding **estate/financial affairs**. A protected person may have both a conservator and a guardian. The conservator and guardian may be the same person. Both guardians and conservators have the obligation to make decisions in the best interest of the protected person.

Who Can Serve as Guardian and/ or Conservator?

An adult family member or friend may petition the court to serve as a guardian and/ or conservator.

A professional guardian, corporation or social service agency also can be appointed by the court to serve as guardian/conservator. A guardian and/or conservator must act in the best interests of the protected person and provide information requested by the court on a yearly basis.

What Are the Alternatives to Establishing a Guardianship/Conservatorship?

Less-restrictive alternatives should be explored before the appointing of a conservator or guardian. Some options include:

Health care directive: Document where a person appoints someone else to make decisions related to medical care if at some point in the future the person is unable to make these decisions for himself/herself. It is sometimes referred to as a living will or health care power of attorney.

Case management services: Someone hired to provide services for a person unable to manage independently.

Representative payee: If Social Security is the primary source of income, a person can designate a payee who receives and manages the benefits.

Joint accounts: A person may add a family member or friend to their bank account, making it possible for the other person to have access to the account and pay bills.

Authorized signer account: Similar to a joint account, but while the person designated has authority to write checks, make withdrawals and deposits, he or she does not have any ownership of the account.

Financial power of attorney: An alternative to conservatorship if a person only needs help with financial affairs and has the capacity to appoint the person.

Trust: Allows the person to remain in control of his/her own affairs and benefit from the property while still living. A trust can designate a successor trustee who will manage if the person becomes incapacitated.

When Can Planning for Guardianship Begin?

Planning for guardianship/conservatorship can begin six months prior to a person turning 18 years old. However, the hearing and guardianship/conservatorship does not take effect until the protected person is 18.

How Is Guardianship or Conservatorship Established?

A person files a case to petition the court to name him/her as the guardian/conservator for a person who is unable to make decisions for himself/herself.

A petition for appointment of a guardian or conservator is a legal form requesting the probate division of the district court to appoint a competent adult to act in the best interest of a protected person who needs assistance with decision-making. The protected person must be given notice of the case.

The person filing the case must show clear and convincing evidence that a conservatorship and/or guardianship is needed. All forms need to be filed in the county where the protected person resides. These may be obtained through the court administrator in the county of residence where the filing will take place.

Minnesota's forms are located on the state's website (www.courts.state.mn.us/ctforms). These forms are available in English, Hmong, Somali and Spanish.

Letters of guardianship or conservatorship are evidence of the guardian or conservator's authority to act on behalf of the protected person. The letters need to be presented when the guardian/conservator signs legal documents.

What Is the Cost?

Costs come from court filing fees and attorney fees. If the protected person doesn't have enough money to pay court fees, a petition (called in forma pauperis) can be filed with the court to waive the filing fees. This allows people with a very low income and few assets to be excused from court and other associated costs. Check with the county in which the papers will be filed to find out your exact fee.

The person filing for guardianship or conservatorship can decide whether or not to use an attorney.

Resources

Arc Greater Twin Cities

2446 University Ave. W., Suite 110, St. Paul, MN 55114-1740

952-920-0855

arcminnesota.org/regions/greater-twin-cities-region/

ARC Minnesota

770 Transfer Road, Suite 7A, St. Paul, MN 55114

651-523-0823 or 1-800-582-5256

arcmn.org

ARC of the United States

1616 L St. NW., Suite 301, Washington, DC 20036

202-534-3700

thearc.org

Minnesota Association for Guardianship
and Conservatorship (MAGIC)

651-292-9131

minnesotaguardianship.org

National Guardianship Association

guardianship.org

Minnesota Disability Law Center

612-332-1441 or 612-334-5970

1-800-292-4150

mndlc.org

Web Resources for Surrounding States

Iowa: www.iowalegalaid.org

North Dakota: www.gand.org

South Dakota: ujs.sd.gov/Forms/guardianship.aspx

Wisconsin: www.cwagwisconsin.org/elder-law-center/guardianship-support-center

Attorneys

Minnesota Continuing Legal Education
Division of Minnesota State Bar Association
651-227-8266 or 1-800-882-6722

Minnesota State Bar Association
612-333-1183 or 1-800-882-6722

Lawyer Referrals
1-800-292-4152

This information isn't meant to serve as legal advice. If you need advice or help in understanding this information, please consult an attorney or legal aid office

Make An Appointment

[651-290-8707](tel:651-290-8707)

Refer a Patient

[651-325-2200](tel:651-325-2200)

This information is for educational purposes only. It is not intended to replace the advice of your health care providers. If you have any questions, talk with your doctor or others on your health care team.

If you are a Gillette patient with urgent questions or concerns, please contact Telehealth Nursing at [651-229-3890](tel:651-229-3890).