



## Guardianships and Conservatorships

### When is a guardianship or conservatorship needed?

When a person is incapacitated and can't manage their own affairs, a court can name someone to help. Incapacitated means the person is so impaired that they don't have the understanding or ability to make or communicate good and safe personal decisions. They can't meet personal needs for medical care, food, clothing, shelter or safety, or take care of finances, even with help. A court decides if someone is incapacitated.

A person is not automatically incapacitated because they have a certain diagnosis like Alzheimer's Disease or because they have a developmental disability. The court reviews a lot of things besides just a diagnosis when deciding if someone is incapacitated or not.



The court may decide to give a guardian or conservator power to make decisions in some but not all areas of a person's life. This is called a Limited Guardianship or Conservatorship. A full Guardianship or Conservatorship is mostly considered a last resort when no other supports have effectively helped a person.

In a guardianship or conservatorship, the person who needs help does not lose important rights, like the right to vote or the right to personal privacy, unless the court has a good reason and makes a specific order.

### What is the difference between the two?

- In a **guardianship** the person who needs help is called the **ward**. The person helping is called the **guardian**. A guardian looks after the **personal** needs of the ward.
- In a **conservatorship** the person who needs help is called the **protected person**. The person who helps is the **conservator**. A conservator looks after the **financial** affairs of the protected person.

Sometimes, the court names a guardian **and** a conservator to help. The court looks for ways to help the ward or protected person with the least amount of limits possible.

Guardianships and conservatorships are very serious and are not set up without good reason. Minnesota law encourages people to try other less restrictive things before filing for guardianship or conservatorship. Some things people might try are::

- setting up a health care directive. See our fact sheet [Health Care Directives](#).
- setting up a power of attorney. See our fact sheet [Power of Attorney](#).
- naming a representative payee for social security benefits, or
- getting a case manager to help.

A person asking the court for guardianship has to explain what other things they tried and why they didn't or won't work.

### **What powers does a guardian or a conservator have?**

- A **guardian** has power over the person – They make personal decisions for the ward, like medical care, or where the person will live.
- A **conservator** has power over the estate – They take care of money and property. They handle the income and pay the bills of the protected person.

The guardian or conservator don't have to pay for things for the ward or protected person out of their own money. They use the ward or protected person's money. But, they must tell the court – usually yearly – what money came in to the protected person or ward, how it was spent and why. They can be held responsible for doing the wrong things with the money.

Guardians and conservators must talk with the ward or protected person and follow their wishes as much as possible. Guardians and conservators must act in the best interest of the ward or protected person.

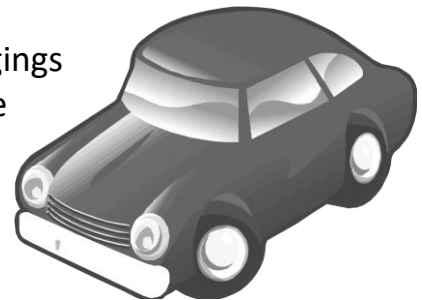


For example, a guardian can't agree to medical care that they know is against the ward's beliefs. They cannot limit the ward's freedom unless it is needed to protect them from danger.

## What rights does a ward or protected person have?

The ward or protected person has legal rights. There may be some limits depending on the orders from the court. But in general, a ward or protected person has the right to:

- Be treated with respect. This includes respecting medical preferences and religious beliefs.
- Get needed medical treatment in a timely manner.
- Control the things in life that have not been ordered by the court to be someone else's responsibility.
- Have a guardian or conservator who meets their needs.
- Ask the court if they want to change where they live or keep someone from moving them.
- Decide what should be done with personal belongings like clothes, furniture, vehicles. They also have the right to ask the court to review a guardian or conservator's plans to deal with their personal belongings.
- Personal privacy.
- Choose who they want to talk to or visit with (unless there is reason to believe that that the visit may cause harm to safety or health).
- Marry and have children. A ward or protected person has the right to consent or object to sterilization.
- Ask the court to end or change the guardianship or conservatorship.
- Be represented by an attorney in any proceeding, including helping them to ask the court for changes.
- Vote.
- Make a Health Care Directive and appoint a health care agent. See our fact sheet [Health Care Directives](#).



## How is a guardianship or conservatorship set up?

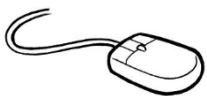
A person files a request (called a Petition) to ask the court to name them or someone else as a guardian or conservator for a person who needs help. The person who needs help must be given notice of the Petition. The person who needs help has the right to a lawyer. If they can't afford a lawyer, the court can order the county to pay for one.

The person filing the Petition must show "clear and convincing" evidence that a guardianship or conservatorship is needed. This can be hard if the person who needs help doesn't agree. If the court grants guardianship or conservatorship, then the court order will specify the protections that the ward or protected person needs. The order could give the guardian or conservator full powers, but it also may be limited to certain areas of need.



There are [forms to ask the court](#) to set up a guardianship or conservatorship for someone who needs help.

Go to [www.mncourts.gov](http://www.mncourts.gov).



→ Click on *Get Forms*

→ Click on *Guardianship/ Conservatorship*

## Who can be appointed a guardian or conservator?

The court decides who is appointed as the guardian or conservator. The court might choose:

- a guardian that is currently helping the person in this state or another state
- an agent appointed by the person in a health care directive or Power of Attorney
- the spouse or another person nominated in a will
- an adult child of the person, or
- the parent of the person.

For the most part, paid caregivers like medical care providers or nursing home residences cannot be appointed as the guardian or conservator.

If it makes sense for two people to be appointed as guardian or conservator, for example two adult children of a senior with advanced dementia, then the court may appoint two co-guardians or co-conservators.

## Can a ward or protected person go back to court if they think the guardian or conservator is not acting in their best interest?

Yes. The guardian or conservator is always under the authority of the court, and a ward or protected person can ask the court to order them to do something differently.

A ward or protected person has a right to a lawyer in any guardianship or conservatorship proceeding. If a person knows who their court appointed lawyer is they can contact them for help. A person can also call or write to the probate court to ask for a hearing and ask that a lawyer be appointed to help them.

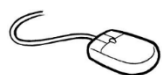
## Can a guardianship or conservatorship be ended?

Yes. The court can end the guardianship or conservatorship if the ward or protected person shows the court that they no longer need help or protection. Usually, a doctor or social worker needs to testify that the ward can handle his or her own affairs. If the court agrees, court supervision ends and the ward or protected person is free to make their own decisions.



## More Resources

For more information, there is a [Guardianship and Conservatorship video](#) from the Minnesota Judicial Branch at [www.mncourts.gov](http://www.mncourts.gov)



- Click on *Help Topics*
- Click on *Conservatorship* or click on *Guardianship*
- Under the Overview tab, click on *Guardianship/Conservatorship Video*

There is also a Minnesota Judicial Branch [Guardianship and Conservatorship Manual](#). It is in the same place as the video above but under the *Rules, Laws & Resources* tab.

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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