



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. A court decides if someone is incapacitated.

First, a court looks at if the person can take care of their personal needs by themselves. Needs like medical care, food, clothing, shelter, safety, or take care of finances.

Second, if they can't do those things by themselves, can they do them with help?

The court also checks if the person can name someone to make decisions to help meet their needs. Like with a health care directive or power of attorney.



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 a diagnosis when deciding if someone is incapacitated or not.

If a court decides a person is incapacitated, and needs more help than these other things give, they can name someone to be a guardian or conservator. The court also decides how much power to give the guardian or conservator. They may decide to give them 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 usually considered a last resort when no other supports have helped a person.

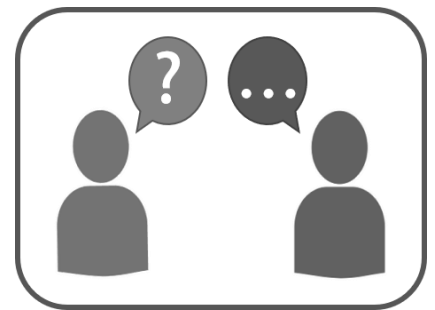
In a guardianship or conservatorship, the person who needs help does not automatically lose important rights. For example, they don't lose the right to vote or the right to personal privacy, unless the court has a good reason and makes a specific order.

What is the difference between the two?

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

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

Guardianships and conservatorships are very serious and are only set up if there is a good reason. Minnesota law encourages people to try alternatives before filing for guardianship or conservatorship. Some other less restrictive 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 or social worker 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 and duties do a guardian, or a conservator have?

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

The guardian or conservator don't have to pay for these things out of their own money. They use the person subject to guardianship or conservatorship's money. But they must tell the court – usually yearly – what money came in, 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 person subject to guardianship or conservatorship and follow their wishes as much as possible. Guardians and conservators must act in the best interest of the person subject to guardianship or conservatorship.



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

Guardians and conservators must report back to the court every year

Guardians or Conservators report to the court every year by filling out an annual report. They must do these annual reports online.

- Guardians must e-file their annual reports using [MyMNGuardian](#).
- Conservators must e-file their annual reports using [MyMNConservator](#).

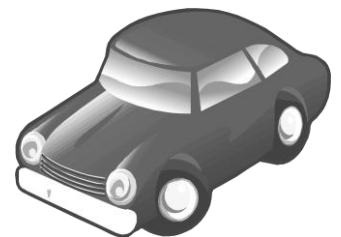
A Guardian or Conservator can ask for a waiver to the online filing requirement if they don't want to do the forms online. They can print out the forms and file them directly with the court. [Minnesota Judicial Branch - Get Forms | Minnesota Judicial Branch \(mncourts.gov\)](#) under "Reporting Forms"

They must also give a copy of that report to the person subject to guardianship or conservatorship, as well as a copy of the Notice of Rights.

What rights does a person subject to guardianship or conservatorship have?

The person subject to guardianship or conservatorship has legal rights. There may be some limits depending on the orders from the court. But in general, they have 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.
- Get care and support, enjoy a social life with activities, and have schooling, job, and other training, resources, and opportunities.
- 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. But they might need court approval.
- Have children. A person subject to guardianship or conservatorship has the right to consent or object to sterilization.
- Ask the court to end or change the guardianship or conservatorship.
- Be represented by a lawyer in any proceeding, including helping them to ask the court for changes.



- Vote.
- Make a Health Care Directive and appoint a health care agent unless a court says they can't. 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.



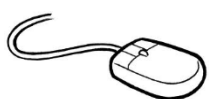
The person filing the Petition must show that:

1. the person is incapacitated and
2. there are no alternatives to guardianship that meets the person's needs

The court requires "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 lays out the protections that the person subject to guardianship or conservatorship 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.



→ Click on *Forms & Instructions*

→ Click on *Guardianship/ Conservatorship*

How long does a guardianship last?

If the person needing guardianship is under 30 years old when guardianship is ordered, it can only last for 72 months (or 6 years). If the Guardian thinks the guardianship needs to continue, they can file another petition before or after the order expires.

If the person needing guardianship is 30 or older when guardianship is ordered, it can be indefinite. But the court can choose to put a time on it if they think the person may get back some ability in the future.

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
- the parent of the person, or
- someone whose job is to serve as a professional guardian or conservator

For the most part, paid caregivers like medical care providers or nursing home employees can't be appointed as the guardian or conservator.

If it makes sense for 2 people to be appointed as guardian or conservator, then the court may appoint 2 co-guardians or co-conservators. An example of when this could happen is when there are 2 adult children of a senior with advanced dementia.

Can a person subject to guardianship or conservatorship 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 the person subject to guardianship or conservatorship can ask the court to order them to do something in a different way.

A person subject to guardianship or conservatorship 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 person subject to guardianship or conservatorship shows the court that they no longer need help or protection. Usually, a doctor, social worker or therapist needs to testify that the person subject to guardianship can handle their own affairs. If the court agrees, court supervision ends and the person subject to guardianship or conservatorship is free to make their own decisions.

More Resources

Find more information at www.MNcourts.gov.

- <https://mncourts.gov/help-topics/guardianship>
- <https://mncourts.gov/help-topics/conservatorship>

Under *Rules, Laws & Resources* on the left menu of both pages you can find a video and manual on the topics.

Supported Decision Making

Volunteers of America has a project that works to reduce guardianships and conservatorships and replace them with “supported decision making.” This is an alternative that has less limits and can give the person more power to make their own choices and decisions. For more information go to:

<https://www.voamnwi.org/center-excellence-supported-decision-making>.

The court has to think about supported decision making in every guardianship petition. Then decide if it is a good alternative.

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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