

Guardianship, Conservatorship, and Supported Decision Making in Minnesota

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Who is “Incapacitated”?

Minnesota law defines “incapacity.”

Guardianship: “Personal Decisions” (including medical)

1. An individual who is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions ; AND
 2. Who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety.
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Guardianship: Factors to Consider

Can the person manage their own medication

Do they remember to take their medication accordingly to doctor's orders

Can they schedule doctor's appointments. Inform doctor of problems with medication

Can they cook for themselves

Can they understand healthy vs. unhealthy/unsafe food (e.g. expired food)

Can they manage their own bathing and hygiene

Live independently or arrange for proper housing for themselves

Dress accordingly for winter vs. summer weather; clean clothes

Conservatorship = Financial Decisions \$\$\$

Does not understand or appreciate the assets they own

Being vulnerable or influenced by others, easily scammed

Unable to appreciate the value of money (pays too much for items)

Not able to appreciate that bills need to be paid on time

Giving money to others when it is inappropriate

Spending in excessive amounts

Running up credit card bills with no plans on re-paying (or ability to re-pay)


Conservatorship and Incapacity

An individual is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, and the incapacity is proven:

That the person is unable to manage property and business affairs due to their impairment, and

Property will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual; and

No lesser restrictive means are available.



Guardianship and Conservatorship

A court process in the State of Minnesota when a decision maker is needed for another person.

The person who files a petition with the Court requesting the appointment of a guardian or conservator is called the Petitioner.

The person who is in need of a decisionmaker, likely due to their incapacitation, is called the Protected Person or Respondent.

Cases are filed at the county level.

Emergency Guardianships and Conservatorships – a way to get into court as soon as possible. Legal appointment is only valid for 60 days

Public and Private Guardianships and Conservatorships

Public Cases – in some instances, the County will get involved to initiate the court process and/or where the County will serve as the guardian or conservator

Private Cases – cases where the Court appoints a private citizen, such as a family member, close friend, professional guardian/conservator to serve as the guardian or conservator.

Who Can Petition the Court?

A spouse, an adult child, a parent, family member, friend, etc.

Requirements of the Petitioner:

- Can the Protected Person/Respondent sufficiently understand or have the mental ability to express a preference on who is appointed as guardian/conservator.
 - Regular interaction between the person and the proposed guardian/conservator
 - Interest and commitment in advocating for the person
 - An understanding of the person's needs in all areas of the person's life
- The Court may appoint Co-Guardians or Co-Conservators

Background Study

A criminal background check for the proposed guardian/conservator is required.

No criminal background check is required if the petitioner is a parent or guardian of the person who has a developmental disability or a related condition and if the parent or guardian has raised the person in the family home until the time the petition is filed.

Petition

Who is petitioning the Court to serve as guardian/conservator → “Petitioner”

Who is incapacitated and in need of a guardian/conservator → “Respondent”

The reasons why a guardian/conservator is needed (be very specific)

Remember, the Judge knows nothing about your particular situation.

Next of Kin – spouse, adult children, adult siblings, anyone the person has lived with for more than 6 months

Administrator (hospital, nursing home, home care agency)

Legal Representative (representative payee, trustee, etc.)

Bill of Particulars

This is where all of the specific facts regarding the person are included

Disclosure of health and financial information.

Diagnosis, medications, etc.

Specific financial information

Guardianship: Why a guardian is needed and the Respondent's behavior deficits that evidence the person's inability to meet their medical care, nutrition, clothing, shelter and/or safety

Less restrictive means – what else have you tried that would alleviate the need for a full guardianship? Why were those less restrictive means not successful?

Bill of Particulars

Conservatorship:

Evidence the person is unable to manage property and business affairs because of an impairment in their ability to receive and evaluate information or make decisions (general mental condition)

Demonstrated behavioral deficits evidencing their ability to manage their financial affairs

Less restrictive means that have been attempted. Why were the lesser restrictive means not successful?

Less than Full Guardianship

Establish where the person will live

Take care of their clothing, furniture, vehicles, and other personal effects

Give any consent for medical care or professional care, counsel, treatment, or service

Enter into contracts except for necessities

Exercise supervision over the person, but may not restrict the person's ability to communicate, visit, or interact with others unless there is good reason to believe the restriction is necessary to prevent significant harm.

Apply for benefits, assistance, services, et. through any government entity



Less than Full Conservatorship

Pay for their support, maintenance, and education

Pay their debts

Possess and manage their assets, collect debts, compromise a lawsuit, invest their funds

Exchange or sell real estate

Enter into contracts, except for necessities

Apply on the person's behalf for assistance, services, benefits through a government entities

Interested Parties

The law requires “interested parties” to be served with notice of some of the initial pleadings.

An interested party could be a spouse, adult children, other family member, parents

The interested parties will need to be given notice of the court hearing

They are not required to attend but may attend if they want to challenge the appointment or challenge who is seeking appointment as guardian/conservator

Other Documents/Pleadings

An attorney is appointed by the Court to represent the Respondent/Protected Person. There is no charge to the Respondent.

A Court Visitor is appointed to meet with the Respondent/Protected Person

Physician's Statement – not required but can help support a petition

Acceptance of Appointment and Oath

Watch the Guardianship/Conservatorship Video

Application for Informa Pauperis – waiver of court fees

Criminal Background Check Form

Court Hearing

Emergency Hearings – the court may grant the petition, immediately grant the petition but schedule a hearing, deny the petition

Other Hearings – the court may grant or deny the petition


In all cases, the court could find lesser restrictive means are available

Zoom and in person hearings

The ultimate goal of the hearing is to receive a court order stating you are the person's guardian and/or conservator. You will need this to be able to act on their behalf.

That's It, Right?

Guardianship

- Once appointed, a guardian is required to provide certain annual updates to the Court and interested parties
 - Personal Well-Being Report
 - Notice to the Respondent of their right to request termination of the guardianship (Right to Restoration)
 - MN has an online program called MyMnGuardian where the documents are filed.
 - Certain interested parties must be served with copies of these documents.
 - The Respondent must also be served with a copy of the documents.
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That's It, Right?

Conservatorship

A newly appointed conservator needs to file an Inventory with the Court.

The Inventory details the assets (cash, bank accounts, personal property, real estate, etc.) the person owned when the conservator was appointed.

Annual accountings – detailing the income and expenses the person had during the course of the last year

These documents must be served on interested parties and the Respondent.

MN's online system to report the information is called MyMNConservator

How Does Guardianship/Conservatorship End?

The Respondent no longer needs the guardian – restoration of capacity

The Respondent no longer needs the conservator – restoration of capacity

Alternatives to guardianship/conservatorship exist

The Respondent passes away

NEW: If the Respondent is under the age of 30, the guardianship will automatically terminate after 72 months (6 years). To continue to serve as guardian, a new Petition will need to be filed with the Court.

Questions?

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