

Estate & Elder Law Services
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GUARDIANSHIP FACT SHEET

In Minnesota, a guardianship proceeding is a legal process by which the court appoints a person (the guardian) to make decisions about an incapacitated person's (the ward's) medical care, personal care and residence. A guardianship is different from a conservatorship in that a conservatorship proceeding is a legal process by which the court appoints a person to manage an incapacitated person's financial affairs. In most instances, a guardian must pass a criminal background check. Guardianship laws vary from state to state.

When is a guardianship needed?

A court must determine a person to be an "incapacitated person" before a guardian may be appointed. An "incapacitated person" is someone who is diagnosed with a medical or mental condition that leads to a lack of understanding or capacity to make or communicate reasonable personal decisions, and whose behavior shows that he or she is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety even with appropriate technological assistance. A guardianship has to be the least restrictive way to meet these needs.

Who can be appointed a guardian?

Any appropriate adult can be appointed a guardian, including a friend, family member, or professional. If there is disagreement as to whom should be the guardian, the court determines who would best serve the interests of the proposed ward. Minnesota law lists these persons in priority order:

- A guardian currently acting for the person in this state or elsewhere;
- An agent appointed by the person under a health care directive;
- The spouse of the person or other individual nominated by a deceased spouse in a will or in a signed writing executed the same way as a health care directive;
- An adult child of the person;
- A parent of the person or other individual nominated by a deceased parent in a will or a signed writing executed the same way as a health care directive; or
- An adult with whom the person has resided for more than six months.

What powers does a guardian have?

Powers of the guardian may include one or more (or all) of the following:

- To have custody of the person;
- To decide where the person will live;
- To make decisions about the person's personal property such as clothing, furniture and personal effects;
- To give consent or withhold consent for medical care or treatment;
- If there is no conservator of the estate, to make or to withhold approval of contracts for the ward;
- If there is no conservator of the estate, to apply for government benefits or assistance for the ward; and
- To exercise general supervision over the ward.

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What duties does the guardian have?

A guardian has the duty to provide for the ward's "care, comfort, and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation." Minn. Stat. §524.5-313. The guardian has no duty to pay for these items out of the guardian's personal funds, but should be aware of the ward's resources in arranging such care. A guardian has the responsibility to take reasonable care of the ward's personal property and to seek appointment of a conservator of the estate if other property requires protection. Each year the guardian must make a report to the court about the ward's personal well-being, provide an informational statement, and provide the ward with a notice of rights to petition the court to end the guardianship.

Common questions.

- *Is there anyone who cannot be appointed as a guardian?* Paid caregivers, unless related to the person by blood, marriage, or adoption, cannot be appointed as guardians. Paid caregivers include any individual or entity providing residence, custodial care, medical care, employment training, or other care or services for the person for which they receive a fee.
- *What is meant by "less restrictive"?* Less restrictive alternatives must be considered and ultimately ruled out prior to pursuing guardianship to ensure there is no other way to provide for the care and safety of the person with questionable capacity. Less restrictive alternatives to guardianship include: having family or close friends increase their involvement to meet the person's needs; creating a Health Care Directive (formerly known as power of attorney for health care or living will); working with a geriatric care manager to recommend, arrange, and monitor services.
- *Can there be more than one guardian per ward?* There is no limit on the number of guardians who may be appointed for a person, but as a practical matter, it is not wise to have more than two co-guardians. When co-guardians are appointed, both signatures are required for written consent.
- *Does a guardian have to submit to a background check?* Yes, the court cannot appoint a person as a guardian until a background study has been completed of criminal history records and records of substantiated maltreatment of vulnerable adults and minors. No background check is necessary when the guardian is the parent of the ward and the ward has lived with the parent all of his/her life.
- *Are the powers of a guardian unlimited?* No. A guardian's powers are limited to what the court authorizes the guardian to do. The court should only give a guardian "those powers needed to provide for the needs of the incapacitated person" and grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs.
- *Can I challenge the guardian's actions?* The guardian is under the control of the court "at all times and in all things." The statute specifically allows the ward or an "any person interested in the ward's welfare" to petition the court to terminate or modify the guardianship.
- *When does a guardianship terminate?* A guardianship terminates upon the death of the ward or upon restoration to capacity of the ward.
- *Who may petition to end/change the guardianship?* The ward, or any person interested in the ward's welfare, may petition the court to restore the ward to capacity or terminate the guardianship if it is in the best interest of the ward. Likewise, an interested party or the ward may petition the court to remove a guardian and appoint a successor.

CONTACT OUR OFFICE AT 612-676-6300 FOR LEGAL REPRESENTATION REGARDING GUARDIANSHIP MATTERS

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