



GUARDIANSHIP AND CONSERVATORSHIP

What is guardianship and conservatorship?

Guardianship is a legal relationship whereby the Probate Court gives one person (the guardian) the power to make *personal decisions* for another (the ward). A conservatorship is a legal relationship where the Probate Court gives one person (the conservator) the power to make *financial decisions* for another (the protectee). A guardian/conservator may be appointed when a Probate Court determines that an individual is unable to care for himself/herself by reason of mental illness, mental retardation or physical incapacity.

When is a guardianship appropriate?

Guardianship is appropriate when impaired judgment or capacity poses a major threat to a person's welfare. A medical evaluation by a licensed physician is necessary to establish the proposed ward's condition. However, only a court can determine the need for a guardian and/or a conservator.

How can I become a guardian and/or a conservator?

Assuming that a physician is prepared to attest to the proposed ward's incompetence, a petition must be filed with the Probate Court requesting the appointment of a guardian. The proposed conservator may be required to file a bond with the court. Then, the court directs that close relatives and the ward him/her self receive notice of the filing of the petition for guardianship. The court sets a date by which anyone wishing to object may do so, including the proposed ward. An attorney is appointed to represent the interests of the proposed ward/protectee. Then a hearing is held where a judge decides whether a guardian should be appointed.

How long does this appointment last?

An appointment may last until the death of the ward or the guardian, until the ward is able to establish that he/she is competent, or until the guardian resigns or is removed by the Probate Court.

What authority does the guardian have?

Unless limited by the court, the guardian has total control over the *personal decisions* of the ward. This includes deciding where the ward will live, determining how the ward's funds will be spent, and making routine medical decisions for the ward.

What are the responsibilities of the conservator?

The conservator must account carefully for all of the ward's income and any expenditure made on his or her behalf. This is accomplished by the guardian filing an inventory listing the ward's assets with the court as of the date of appointment and by filing annual accounts with the court detailing all the income and expenses the ward has. For unusual or extraordinary expenses or the sale of real estate or property, the conservator has to seek approval of the court in a separate proceeding. A final account must be filed when the conservatorship is terminated. The conservator is liable for his or her acts until the court allows (approves) the account.

What are the alternatives to guardianship?

There are several less restrictive alternatives to guardianship. These include the durable powers of attorney, representative payees, trusts, and health care proxies. Each of these options may avoid or delay the need for a guardian. These documents need to be executed before the individual is incapable of doing so due to mental impairment.



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