

"limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services."

A guardian has to give notice to "interested persons" before disposing of a ward's personal property or personal effects.

**Q) How much does it cost to get guardianship?**

A) If the proposed ward has funds, the court costs for getting guardianship may be paid from those funds. If the proposed ward is indigent, the court may order the county to pay the costs of the proceeding. To get costs paid for this way, you have to ask for an in forma pauperis order from the court. Forms for that purpose are available on line at <http://www.guardianforms.com>.

Petitioner fees will be considered separate from the fees for the proposed Ward. Speak to your Developmental Disabilities Case Manager to see if Petitioner fees may be covered in your case.



Ramsey County Community Human Services Department

Developmental Disabilities Unit  
160 East Kellogg Boulevard, #7800  
St. Paul, MN 55101

Child Intake and Information: 266-4500  
Adult Intake and Information: 266-4012



**FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**

**INTRODUCTION**

The purpose of this pamphlet is to explain some of the duties and responsibilities of being a conservator or guardian. This pamphlet is not intended to advise participants on legal issues nor is it intended to be a substitute for a lawyer or legal advice. It is rather a general description of procedures and basic information about guardianship and conservatorship matters in Ramsey County Probate Court.

Guardianships and conservatorships are protection for both the ward or protected person and the guardian or conservator. The ward or protected person is protected by court monitoring of the ward's well being and the protected person's property. In addition, the estates of protected persons are protected by fiduciary bond. The guardian or conservator is protected by the record kept in Probate Court of all well-being reports and financial dealings. Also, a record is kept in Probate Court of the annual service of a Notice of Rights to the ward or protected person. If at any point in a guardianship or conservatorship proceeding a procedural question arises, court personnel may be able to give assistance. The general information number at the Ramsey County Probate Division is (651) 266-8145. By statute, court employees may not give legal advice.

**DEFINITIONS & POWERS**

Guardianships or conservatorships are designed for those people in need of protection in personal or financial matters.

A **conservator** or **guardian** is someone appointed by the Probate Court to handle the affairs of an incapacitated person. Before an appointment is made, the person for whom a guardianship or conservatorship is sought is

called a **respondent**. After an appointment is made, the person is called a **protected person** (in a conservatorship) or a **ward** (in a guardianship).

A **Guardian** takes care of a protected person's personal affairs (medical care, nutrition, clothing shelter, residence, and safety).

A **Conservator** manages a ward's financial affairs (finances, property and real estate).

An incapacitated person may have both a **conservator** and a **guardian**. The **conservator** and the **guardian** may be the same person(s).

Guardians and Conservators are subject to the control and direction of the court at all times and in all things. The powers that can be granted to a guardian are found in Minnesota Statutes §524.5-313. The powers that can be granted to a conservator are found in Minnesota Statutes §524.5-418.

**REQUIREMENTS OF THE GUARDIAN AFTER APPOINTMENT**

**Personal Well Being Report.** In cases where a guardian is appointed, the guardian must file a Personal Well-Being Report yearly.

**Annual Notice of Rights.** Every year the ward must be given a notice of the right to petition the court for restoration to capacity. The verification and proof of giving this notice to the ward must be filed with the Court in the form of an Affidavit of Service by mail or in person.

**Notice of Intent to Dispose of Personal Property.** Notice must be given to the protected person and to all persons listed in the Petition, if certain of the ward's personal property (clothing, furniture, vehicles, and

other personal effects) are to be sold or disposed. This notice must be given ten days or more before such sale or disposition. A copy of this notice is filed with the Court.

**Required Signatures.** If two people are appointed as guardians, every document signed on the ward's behalf must have signatures of both guardians.

## FREQUENTLY ASKED QUESTIONS

### Q) Can more than one guardian be appointed?

A) Yes. There is no limit in the law 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. If a co-guardian is not going to be available for a period of time, that co-guardian may use an appropriate power of attorney to delegate to someone else (which could be the other guardian) any powers regarding care, custody, or property of the ward except the power to consent to marriage or adoption of a minor ward.

If co-guardians are appointed and one becomes unavailable, unable to perform their duties, or dies the remaining co-guardian does not automatically assume all responsibilities. In fact, the matter must go before the court for the remaining guardian to be appointed the successor guardian. Thus appointing co-guardians so one can take over when the other is unavailable is not a recommended practice.

### Q) When does an adult person need a guardian?

A) Parents do not have legal authority to make decisions for their children after they turn 18. If someone will actually need to make decisions for your child after he or she turns 18, your child needs a guardian or some other, less restrictive, protection.

The law says that a person must be an "incapacitated person" before a guardian may be appointed. An "incapacitated person" is someone:

- Who is so impaired that the person lacks the 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.

Guardianship has to be the least restrictive way to meet these needs.

### Q) What power does a guardian have?

A) Under Minnesota law, the 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 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;
- To exercise general supervision over the ward.

### Q) Is a conservator of the estate always needed?

A) Only if the proposed protected person has money or real property, cannot appropriately manage that money, and there is no other less restrictive way to assist that person.

A person who is getting Social Security or SSI benefits does not have to have a conservator of the estate, because the Social Security Administration can appoint a representative payee for someone who cannot manage those funds. For some people, a Power of Attorney will allow another person to manage a checkbook or savings account. In both of these cases, there is no court supervision of the actions the person takes.

For persons with Developmental Disabilities, often, a Guardian of the Person is sufficient. However, there are some circumstances where Conservatorship is appropriate. Legal advice should be sought if this seems like a possibility.

### Q) What general limits are there on a guardian's power?

A) The basic rule is that a guardian's powers are limited to what the court authorizes the guardian to do. Under the old law, a guardian

of the person had all powers that the law could authorize and a conservator of the person had only those powers the court specifically authorized. Under the new law, a guardian's power can be limited.

The law says that the court should only give a guardian "those powers needed to provide for the needs of the incapacitated person." In another place, the law is even more specific about the court's responsibility to limit the power a guardian can use:

- The court shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and, whenever feasible, make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

### Q) Are there specific areas in which a guardian has limited powers?

A) Yes. For instance—A guardian may not consent to medical care for a ward "which violates the known conscientious, religious, or moral belief of the ward."

Court approval, after notice to "interested persons" is required for psychosurgery, electroshock, sterilization, or experimental treatment.

A guardian may not admit a ward to a regional treatment center except for out-patient services, for temporary care for not more than 90 days in any calendar year, or by going through the commitment process in court.

The guardian's general power to supervise the ward has to be used in a way that