

Frequently Asked Questions *About Guardianship*

*A publication of MAGiC:
an Organization to Explore
Substitute Decision-Making*

What is a guardian?

A **guardian** is someone who has been given legal authority by a court to make some or all personal decisions for an individual who is unable to make his or her own decisions because of incapacity. A **ward** is a person who has a guardian. A guardian can be appointed by the court if the person has a mental impairment such that the proposed ward lacks sufficient understanding or capacity to make or communicate responsible personal decisions and demonstrates deficits in behavior showing an inability to meet personal needs for medical care, nutrition, clothing, shelter or safety. Before appointing a guardian, the court must be satisfied that there are no less restrictive alternatives available.

A guardian is a decision maker, a coordinator of services and an advocate for the best interests of the ward. A guardian does not take the place of a companion or family member.

Who can serve as a guardian?

Although the law establishes a priority for who can be appointed, ultimately, the court determines who should be guardian based on the best interests of the ward. The guardian can be a family member, friend, professional guardian, social service agency, or other interested person. By statute, a guardian must submit to a criminal history and maltreatment record background check, with certain exceptions.

What are the powers and duties of a guardian?

A guardian can only exercise those powers which the court grants. Powers not granted to the guardian are retained by the ward. The court may or may not give the guardian the responsibility to determine where the ward lives, provide for the ward's comfort and maintenance needs, take care of the ward's personal property, make medical or other care decisions, approve contracts, exercise supervisory authority over the ward, and apply for government benefits for the ward. A guardian cannot consent to medical care which violates a known belief of the ward.

How does a guardianship get established?

Any interested person, including a family member or friend, may ask the court to appoint a guardian and ask that specific powers be given to the guardian. A court hearing is required and notice of the hearing must be given to the ward and to persons interested in the ward. An attorney is appointed by the court to represent the ward at the hearing. At the hearing, evidence must be presented to support the need for a guardian. This process may take several months to complete.

Who pays for the cost of the guardianship?

Court costs, attorneys' fees for both the petitioner and proposed ward, and any ongoing guardian fees are paid from the ward's estate. Guardians are allowed to charge fees for their services. When the ward has no money to pay for the guardianship services, limited services may be paid out of the ward's income or paid by the county.

What protections are there for the ward?

Guardians are under the court's supervision. Each year a guardian must file a report of the ward's condition with the court. At any time the ward can petition the court to terminate the guardianship.

Concerns about the actions or decisions made by a guardian, if they cannot be resolved by open lines of communication, can be addressed to the probate court that appointed the guardian, or by filing a complaint of abuse or neglect of a vulnerable adult with the county's adult protection unit.

Are there alternatives to guardianship?

Guardianship is generally considered the choice of last resort. Less restrictive alternatives such as a health care power of attorney/directive, a care/case management plan or the informal assistance of a family member or friend are preferred, assuming they meet the needs of the ward.

Seek Competent Legal Advice

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**Minnesota Association for
Guardianship & Conservatorship**
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