

Selecting a Guardian/ Conservator

Choosing a Professional

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

What is a Guardian or Conservator?

A **Guardian** is someone who has been given legal authority to make some or all personal decisions for an individual who is unable to make his or her own decisions.

A **Conservator** is someone who has been given legal authority to make some or all financial decisions for an individual who is unable to make his or her own decisions.

Both guardians and conservators require a court hearing to be appointed.

Ward — the person who has a Guardian.

Protected Person — the person who has a Conservator.

Guardianship/Conservatorship — the legal arrangement.

Who May Be a Guardian or Conservator?

A family member, friend, bank, corporation, professional guardian/conservator, social service agency, or any interested person appointed by the court. Duties may be shared by more than one of these.

What Are a Guardian's or Conservator's Responsibilities?

The court may or may not give the guardian of the ward responsibility to: make medical and other care decisions; decide where the ward lives; take care of the ward's food, clothing and other personal needs. A conservator of the estate may or may not be given the authority to: pay bills; manage assets; collect debts; manage or sell real estate.

What Protections Are There for the Ward or Protected Person?

Guardians and conservators are under the court's supervision. Each year a guardian files a report on the ward's condition with the court. Each year the conservator files an accounting of the protected person's finances with the court. The conservator's accounting is reviewed by the court by examining the cancelled checks and verifying balances with the bank or investment company. Accountings are on file with the court and are public information.

Conservators of the estate are bonded to protect the protected person's money and investments against mismanagement. The protected person and his/her parents, spouses, children, siblings, and other legal heirs are notified in writing before a home or personal possessions are sold. Any person has a right, with cause, to ask the court to change the guardian/conservator or the powers given.

Actions to Take if There Are Concerns about a Guardian or Conservator

If you are concerned about the actions or decisions of a guardian or conservator, first talk with the guardian/conservator directly about your concerns and work toward a resolution. Most issues are resolved through respectful communication.

Improper actions by professional guardians or conservators are rare, but when they do occur, require action. In the uncommon instance of improper actions by a guardian or conservator:

1. Contact the county probate court with your concerns.
2. File a complaint about the abuse, neglect or financial exploitation of a vulnerable adult with the county's Common Entry Point or Adult Protection.
3. If the matter is criminal or theft, make a police report.

Who Pays for the Guardianship or Conservatorship?

Court costs, attorney fees, guardian/conservator fees and the bond are paid by the ward or protected person's estate. Guardians/Conservators, whether family or professional, are allowed to charge fees. Fees are reviewed by the court to ensure they are fair. When a ward/protected person has no money, guardians/ conservators and their attorneys are allowed fees from part of the ward's/protected person's income or are paid a limited fee by the county.

When Should a Professional Guardian or Conservator Be Used?

Asking the court to use a professional guardian or conservator may be appropriate when: others are unable to act in the best interest of the individual; when families prefer to maintain their current relationship with their loved one, allowing the professionals to make unpopular decisions; there is irresolvable conflict among family; personal financial problems do not allow family members to be bonded; or due to geographic distance. Families whose history is complicated by chemical dependency, abuse, mental illness or family violence may want to consider a professional guardian or conservator.

How Do I Find a Professional Guardian or Conservator?

Referrals are available from county, nursing home, hospital or community social workers; the attorney who brings the petition to court; the attorney appointed by the court to represent the ward/protected person. MAGiC can also provide a list of its members who serve as professionals.

How Do I Choose a Professional Guardian or Conservator?

After receiving two or more referrals, interview prospective guardians or conservators. Ask about the professional's education, training, and experience with the type of need of the ward/protected person; location (how far from the ward/protected person is the guardian/conservator); ability to be bonded; philosophy on issues such as the role of the professional, medical end-of-life decisions and collaboration with the family; perspective on working with a client of a different race, religion or culture. Have a clear understanding of fees and the charges and how the professional will be paid if there are no funds available.

Discuss with the professional how they will decide where the ward/protected person should live; how often they will visit the ward/protected person; how they can be reached in an emergency; how mail will be handled; how often they will have contact with care providers; how care will be supervised; how finances will be handled and managed; who will have access to the ward's/protected person's home; if the home is sold, how this will be decided and handled.

Working with a Professional Guardian/Conservator

It is best for the ward/protected person if their guardian/conservator, family and friends have a good working relationship. The best way to do this is to have good communication and a clear understanding of the role of the guardian/conservator. Know what authority the court has given the guardian/conservator by reviewing the court order appointing the guardian/conservator. Talk with the guardian/conservator about how they will carry out their duties; what role you would like in the life of their client, what information you want and into what decisions you would like to have input. Establish a routine time to talk with the guardian/conservator and agree what you will do if you have questions or a problem arises.

*PROFESSIONALS AND FAMILY MEMBERS
HAVE THE SAME GOAL:*

GOOD CARE FOR YOUR LOVED ONE!

**Minnesota Association for
Guardianship & Conservatorship
www.minnesotaguardianship.org**