

Minnesota Judicial Branch

Guardianship and Conservatorship in Minnesota

GAC101



Guardianship and Conservatorship in Minnesota

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Chapter 1 INTRODUCTION

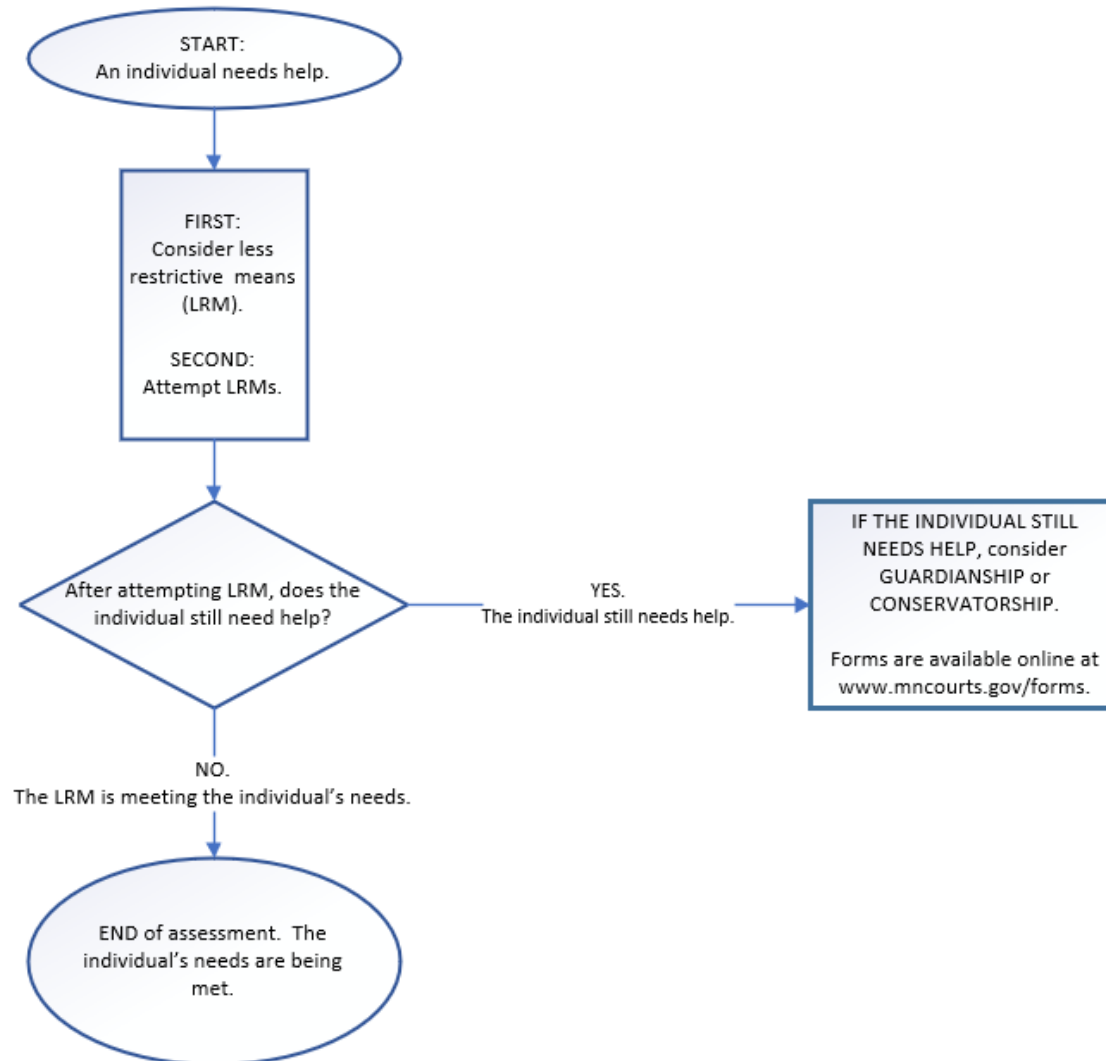
Brief Overview

The appointment of a guardian or conservator is a serious matter involving the limitation of an individual's independence and rights. When guardianship or conservatorship is appropriate, it should be sparingly used and adequately monitored by the legal system and advocates to ensure that the best interests of the individual are protected.

When an individual needs help, there may be options for meeting the individual's needs that are less restrictive than a court-ordered guardianship or conservatorship. In Minnesota statutes, such options are called "less restrictive means," and they are discussed in more detail below. Minnesota law requires that less restrictive means be attempted, considered, and found not to be sufficient before seeking the appointment of a guardian or conservator. The flowchart below is meant to be a simple representation of the idea that a guardianship or conservatorship might be appropriate only if less restrictive means do not meet the needs of an individual.



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If the petitioner (the person starting a court case) can prove that there are no less restrictive means available to meet the needs of the individual, then the judicial officer will appoint a guardian or conservator and grant them powers only to the extent necessary for the protection and welfare of the individual, and not for the convenience of the family, the service system, or society.

Use of this Manual

The manual provides information about the guardianship and conservatorship process in Minnesota. It describes what is expected of the guardian or conservator. Nothing in this manual is legal advice. Due to the complexities of many of the proceedings to establish or maintain a guardianship or conservatorship, it is recommended that a person seek out the legal advice of a competent attorney with experience in guardianship or conservatorship law.

This manual focuses on guardianship and conservatorship of adults only. It does not contain information regarding guardianship or conservatorship of minors.

The information includes brief sections that are designed to be self-instructional. The *Guardianship and Conservatorship in Minnesota* manual is **not copyrighted**. You are encouraged to make additional copies of any or all parts of this manual for your use.

Information and forms can be found on the Minnesota Judicial Branch website:

- [Guardianship](https://mncourts.gov/Help-Topics/Guardianship.aspx) (mncourts.gov/Help-Topics/Guardianship.aspx); and
- [Conservatorship](https://mncourts.gov/Help-Topics/Conservatorship.aspx) (mncourts.gov/Help-Topics/Conservatorship.aspx).

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Chapter 2 GENERAL OVERVIEW

Assessing the Need for a Guardian or Conservator

A **guardian** is appointed to make the *personal decisions* for the person subject to guardianship. The guardian has decision making authority for matters such as choice of place to live, medical decisions, training, education, etc.

A **conservator** is appointed to make *financial* decisions for the person subject to conservatorship. The conservator typically has the power to contract, pay bills, invest assets, and perform other financial functions for the person subject to conservatorship.

The need for a legal guardian or conservator may arise for many reasons. This often includes the interest of a third party, such as a lawyer or a physician, who requires informed consent when there is a belief that an adult is incapable of giving it. It is important to understand that there are many care-giving relationships that exist without court involvement.

Family members often take on informal decision-making roles for each other before a person becomes incapacitated. A common example would be an adult son who assists his elderly father with personal care or financial matters as part of their ongoing relationship. If, however, the father's mental capacity is called into question (for example, due to Alzheimer's, or other diseases affecting the father's decision-making ability), or if family members cannot agree on how to take care of the father, a court order appointing the son as a guardian or conservator may be needed to legally allow him to make decisions on behalf of his father. Other times, the need for a guardian or conservator may come about very quickly as a result, for example, of a severe head injury from an accident.

An individual's need for decision making support or for a decision maker will vary and will depend on their ability to make reasonable decisions. Guardianship or conservatorship, and the need for support in decision making, must be assessed for each person individually.

Establishing a Guardianship or Conservatorship

A guardianship or conservatorship is established through a court action (sometimes called a "proceeding"). The person who files a petition with the court requesting that a general guardianship or conservatorship be established is the **petitioner**. The individual for whom the appointment is sought is the **respondent**.

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Less restrictive means are alternative options and tools that may be helpful to an individual and may eliminate or postpone the need for appointment of a guardian or conservator. Before starting a guardianship or conservatorship case in court, less restrictive means to help the individual must have been considered and attempted. A guardianship or conservatorship petition may be appropriate only if the less restrictive means are not enough to meet the individual's needs. The petitioner must explain to the court what less restrictive means have been considered and attempted, how long the less restrictive means have been attempted, and how the less restrictive means have not been enough to meet the respondent's needs. The petitioner must present evidence to show the court why the appointment of a guardian or conservator is necessary to meet the respondent's needs. More information about less restrictive means is found in Chapter 3.

In a guardianship or conservatorship case, the court will appoint a person (the conservator or guardian) to act as a decision maker for another individual (the respondent) only when it is necessary to do so to protect and supervise the respondent or the respondent's assets. The court will appoint a guardian or conservator only when there is evidence that the respondent is unable to make necessary decisions on their own behalf, and that less restrictive means are not enough to protect the respondent.

Guardianship

Who May Need a Guardian?

According to [Minn. Stat. § 524.310](#) (revisor.mn.gov/statutes/cite/524.5-310), the court may appoint a guardian for a respondent only if it finds that:

- The respondent is an incapacitated person; and
- The respondent's identified needs cannot be met by less restrictive means.

Incapacity is proven when the petitioner can show that the respondent is unable to make responsible personal decisions and is also unable to meet their own needs. An *incapacitated person* is:

"an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance." [Minn. Stat. § 524.5-102, subd. 6](#) (revisor.mn.gov/statutes/cite/524.5-102).

Once the court appoints a guardian, the respondent is then referred to as the *person subject to guardianship*.



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Essentially, a guardian makes decisions regarding the basic personal needs of the person subject to guardianship to the extent the court grants the guardian such power. The powers and duties which a court may grant to the guardian are found in [Minn. Stat. § 524.5-313](#) (revisor.mn.gov/statutes/cite/524.5-313) and are described in detail in Chapter 5.

How long Does a Guardianship Last?

How long a guardianship lasts is called the “duration” of the guardianship. According to [Minn. Stat. § 524.5-310](#) (revisor.mn.gov/statutes/cite/524.5-310), the duration of a guardianship may for a specific period of time or may be indefinite (without a specific ending time specified in the order).

Limited Duration Guardianship

If the person subject to guardianship is less than 30 years old on the date the court files an order appointing the guardian, then the guardianship **must be of a limited duration** set by the court. The limited duration cannot be more than 72 months (6 years). See [Minn. Stat. § 524.5-310\(d\)](#) (revisor.mn.gov/statutes/cite/524.5-310). Note that a person may petition the court for a general or indefinite guardianship for anyone who is 29 years old and who is currently subject to a guardianship of limited duration.

Emergency Guardianship

In certain situations, the court may appoint an *emergency guardian* for up to 60 days. This time period may be extended once for good cause, but the extension cannot be for more than 60 days. If the petitioner believes the individual will continue to need a guardian, the petitioner can file a petition for a general guardianship:

- At the same time as filing the petition for emergency guardianship; or
- During the emergency guardianship.

NOTE: A person can also file a petition for general guardianship after the emergency order expires, but if they file after the emergency order expires, then the guardianship powers lapse. In other words, there would be no court-appointed guardian after the emergency order expires until the court establishes a general guardianship.

See [Minn. Stat. § 524.5-311](#) (revisor.mn.gov/statutes/cite/524.5-311). There is more detailed information about emergency guardianships and emergency conservatorships below.



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Conservatorship

Who May Need a Conservator?

According to [Minn. Stat. § 524.5-409](#) (revisor.mn.gov/statutes/cite/524.5-409), the court may appoint a conservator for a respondent only if it finds:

- The respondent is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States;
- The respondent has property that will be wasted or dissipated unless management is provided; or money is needed for the support, care, education, health, and welfare of the respondent or of individuals who are entitled to the respondent's support and that protection is necessary or desirable to obtain or provide money; and
- The respondent's identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, representative payee, trusts, banking or bill paying assistance, or appointment of an attorney-in-fact under [Minn. Stat. § 523.01](#) (revisor.mn.gov/statutes/cite/523.01).

Once the court appoints the conservator, the respondent is then referred to as the *person subject to conservatorship*.

Conservatorship is tailored to transfer financial decision making power to the conservator only in the areas of life where protection and supervision by a conservator have been proven necessary. The powers and duties which a court may grant to a conservator are found in [Minn. Stat. § 524.5-417](#) (revisor.mn.gov/statutes/cite/524.5-417) and are described in detail in Chapter 5.

How Long Does a Conservatorship Last?

How long a conservatorship lasts is called the “duration” of the conservatorship. According to [Minn. Stat. § 524.5-409](#) (revisor.mn.gov/statutes/cite/524.5-409), the court may appoint a **limited** or **unlimited** conservator. If the court does not specifically limit the duration of a conservatorship, then the duration is indefinite (without a specific time frame ordered).

Emergency Conservatorship

In certain situations, the court may appoint an *emergency conservator* for up to 60 days. This time period may be extended once for good cause, but the extension cannot be for more than 60 days. If the petitioner believes the individual will continue to be in need of a conservator, the petitioner can file a petition for a general conservatorship:



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- At the same time as filing the petition for emergency conservatorship; or
- During the emergency conservatorship.

NOTE: A person can also file a petition for general conservatorship after the emergency order expires, but if they file after the emergency order expires, then the conservatorship powers lapse. In other words, there would be no court-appointed conservator after the emergency order expires until the court establishes a general conservatorship.

See [Minn. Stat. § 524.5-409, subd. 2](#) (revisor.mn.gov/statutes/cite/524.5-409). There is more detailed information about emergency guardianships and emergency conservatorships below.

Emergency Guardianship or Conservatorship

Any person may petition the court to have an *emergency* guardian or conservator appointed. A petitioner should request an emergency guardianship or conservatorship only when it can clearly be shown that the individual or their estate is in in danger of substantial or immediate harm, and the guardianship or conservatorship is necessary for protection. Under these circumstances, the petition for an emergency guardianship or conservatorship can be filed whether or not a petition for general guardianship or conservatorship has already been filed. The court will grant to an emergency guardian or conservator only those powers which are necessary to provide for the demonstrated needs of the person subject to guardianship or person subject to conservatorship.

The court will specify the duration, or length of time, of the emergency guardianship or conservatorship. Generally, this cannot exceed 60 days. See Minn. Stat. §§ [524.5-311](#) and [524.5-409](#) (revisor.mn.gov/statutes/cite/524.5-311 and revisor.mn.gov/statutes/cite/524.5-409). If it appears that the individual will continue to need a guardian or conservator beyond the 60 days, a person can file a petition for a general guardian or conservator:

- At the same time as filing the emergency petition; or
- Before the emergency order expires.

When the emergency guardianship or conservatorship ends, or upon the granting of letters of a general guardianship or conservatorship, the power of an emergency guardian or conservator will also end.



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A person can also file a petition for a general guardian or conservator after the emergency order expires, but if they file the petition after the emergency order expires, then the guardianship or conservatorship powers lapse. In other words, there would be no court-appointed guardian or conservator after the emergency order expires until the court establishes a general guardianship or conservatorship.

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Chapter 3 LESS RESTRICTIVE MEANS

Alternatives to Guardianship or Conservatorship – In General

Independence, respect, and equality are values important to all people. These values help define the concepts of autonomy (independence and freedom) and self-determination (the right to make decisions for oneself).

Less restrictive means must always be considered and attempted before taking away or restricting an individual's civil and legal rights to make decisions. The court cannot appoint a guardian or conservator for the respondent unless the petitioner can show that there is no other way to provide for the respondent's care, safety, or financial management. In other words, the court will appoint a guardian or conservator only when the respondent's identified needs cannot be met by less restrictive means. See Minn. Stat. §§ [524.5-310](#) and [524.5-409](#) (revisor.mn.gov/statutes/cite/524.5-310 and revisor.mn.gov/statutes/cite/524.5-409).

The alternative options can be voluntary, where the individual agrees to the arrangement. They can also be involuntary, where another person makes the arrangements on behalf of the individual. The best choice of alternatives depends on the individual's needs and preferences.

Less Restrictive Means to Guardianship

1. **Health Care Directive:** "Health care directive" is defined in [Minn. Stat. § 145C.01, subd. 5a](#) (revisor.mn.gov/statutes/cite/145C.01). Essentially, it is a written legal document that informs others of the individual's physical and mental health care preferences and wishes when the individual is unable to communicate or unable to make their own health care choices.

An adult individual may also name a "health care agent" who can make decisions for them if their doctors say they can no longer make decisions for themselves. Even an individual who has intellectual or cognitive deficits may still be capable of naming a health care agent to act on their behalf. This could avoid the need for a guardianship.
2. **Individual's Plan:** In the case of the individual who is losing the ability to safely care for themselves in their current living environment, and who did not complete one of the planning tools described in this manual while competent, that individual's own plan could meet their needs and avoid guardianship or conservatorship. The individual may come up with the plan, or they may be directed towards acceptance of a plan formulated with the help of formal or informal supports. This could include hiring home health care and other supportive services, moving to an assisted living or other supervised environment, or moving to a long-term care facility.



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3. **Family's Plan:** Guardianship of an adult whose capacity is in question may be avoided in situations where family members or other informal support networks are available, willing, and appropriate to make a plan of care and to follow through with meeting the needs of the individual.
4. **Care Plan or Community Support:** When an individual is able to participate in decisions about recommended services, a care plan or community support plan may be put in place. This is appropriate when the individual is able to cooperate and is willing to accept the recommended services, but not necessarily be able to carry out and oversee the plan themselves.

Less Restrictive Means to Conservatorship

1. **ABLE Account:** The Achieving a Better Life Experience Act (ABLE) of 2014 allows individuals with disabilities and their families to save for many daily, disability-related expenses on a tax-deferred basis without limiting their ability to benefit from supplemental security income (SSI), Medicaid, and other federal programs. Learn more about ABLE plans online at [Resources – Minnesota Able Plan](https://savewithable.com/mn/home/resources.html) (savewithable.com/mn/home/resources.html).
2. **Banking Options:** There are some simple banking options which in some cases may be used as alternatives to conservatorship. An individual can often retain control of their own affairs with the help of modern banking technology such as:
 - Automatic recurring payments to creditors (utilities, mortgages, and other bills can be routinely paid in this hassle-free manner);
 - Banking by mail, phone, or online;
 - Direct deposit for Social Security and certain other pension and benefit payments; and
 - Specially designed devices for the visually impaired and physically disabled.

Another method often used is joint bank accounts where a trusted friend or family member's name is added to the individual's account. Great caution should be taken, however, as the added person could legally withdraw all the money. There could also be tax problems for either party, as well as complications in eligibility for Medical Assistance. There could also be the right of survivorship, which may not have been intended.

3. **Power of Attorney (POA):** This power of attorney refers only to powers over property or finances. A power of attorney is a document, signed voluntarily by a competent adult (the principal) authorizing another person (the attorney-in-fact) to act on behalf of the principal. An attorney should be involved in the development and execution of such a document.



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A power of attorney can be a general document used for all authorized transactions and affairs related to property owned by the principal. It can also be as limited as a card signed at one bank, which only covers transactions at that bank. In addition to being detailed about what authority is and is not given, the document should also specify how long it lasts.

The principal may revoke (cancel) a power of attorney at any time as long as the principal is competent. The revocation must be in writing, and any third party who might be relying on the power of attorney should be given notice of the revocation.

Authority to exercise the power of attorney can be continued after the principal becomes incapacitated if special language is included in the document. This is called a “durable power of attorney.” Once the principal is incapacitated, the durable power of attorney cannot be terminated (unless it includes a time limit), except if terminated by a guardian or conservator or the court.

A drawback of a power of attorney is that the court does not supervise it, and there are no requirements of surety, bonds, or an annual accounting. The principal could be extremely vulnerable to the theft of funds by the attorney-in-fact; therefore, this should only be used when the attorney-in-fact is trustworthy.

However, if carefully drafted by an attorney who has a good understanding of the principal’s needs and wishes, a power of attorney can be set up to include many safeguards. It is very important for the attorney-in-fact to account for all activities because there are statutory provisions which allow the principal to ask for an accounting at any time, and at execution of the document, it could be required that regular accountings be rendered to some designated person.

- 4 . **Trusts:** Trusts are another way of planning ahead for property and finance-related matters. A trust is a legal plan for placing funds and other assets in the control of a trustee for the benefit of an individual (the grantor). Trusts are most useful in situations involving large assets, as the administration fees of trusts are often costly. Trusts can be set up to be revocable or irrevocable. An attorney knowledgeable in the trust area should be consulted to explain all options.

Trusts can designate one or more persons, an organization, or a bank, to act as trustee. It can be set up to serve a wide variety of purposes, such as paying bills, managing investments, and managing real estate. A trustee provides a financial plan to protect the assets of an individual.

- a. *Living Trust* – A living trust is established by the person who owns the assets (the grantor), directing the trustee to manage the grantor’s property for the grantor’s benefit.



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- b. *Standby Trust* – For planning ahead, it is possible to create a standby trust. In a standby trust, the grantor creates an unfunded trust and enforces a durable power of attorney. This durable power of attorney will direct that in the event of medically certified incapacity, the grantor's assets are to be transferred to the trust and managed according to the terms of the trust agreement.
 - c. *Supplemental Needs Trust* – The purpose of a supplemental needs trust is to provide for the reasonable living expenses and other basic needs of an individual with a disability, when benefits from publicly funded benefit programs are not sufficient to adequately provide for those needs. It does not include trusts funded by the individual with a disability, their spouse, or anyone obligated to pay damages for the individual.
5. **Social Security Representative Payee:** This alternative can be voluntary on the part of a Social Security beneficiary, and it can also be used without the beneficiary's consent in some cases. Unlike the voluntary alternatives to guardianship or conservatorship, a representative payeeship for Social Security benefits, which includes Supplemental Security Income (SSI) benefits, can be set up through the Social Security Administration (SSA) after the individual becomes incapacitated. Representative payeeship might be an appropriate alternative to guardianship or conservatorship if Social Security is the only income and there is no need to protect other assets. You can find more information about representative payees on the [SSA's website](http://ssa.gov/payee/) (ssa.gov/payee/).
6. **Arrangements for Veterans and Railroad Retirement Benefits:** For individuals receiving either Railroad Retirement Benefits or Veterans Benefits, substitute payment arrangements much like Social Security representative payeeships may be established if the beneficiary is found to be incapacitated through the process established by each respective administration.

As with Social Security representative payeeship, the appropriateness of such arrangements should be carefully considered given individual circumstances.

- You can find more information about the Veterans Administration's (VA) [Fiduciary Program](http://benefits.va.gov/fiduciary/index.asp) on the VA's website (benefits.va.gov/fiduciary/index.asp).
 - You can find more information about representative payees for Railroad Retirement Benefits by choosing "Representative Payee" on the [U.S. Railroad Retirement Board's \(RRB\) Frequently Asked Questions webpage](http://rrb.gov/faq) (rrb.gov/faq).
7. **Management of General Assistance Benefits:** General Assistance benefits may be vendor-paid (for example, rent paid directly to the building manager) if the recipient is unable to manage the grant for their own benefit. Such arrangements are made by the county human services agency that administers the grant.



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Other Protective Orders

[Minn. Stat. § 524.5-412](#) (revisor.mn.gov/statutes/cite/524.5-412) provides that the court, instead of appointing a conservator, may after a hearing, authorize, direct, or approve:

1. Any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the individual, including:
 - The sale, mortgage, lease, or other transfer of property, subject to the procedural and notice requirements of [Minn. Stat. § 524.5-418](#) (revisor.mn.gov/statutes/cite/524.5-418);
 - The purchase of an annuity;
 - The making of a contract for lifetime care, a deposit contract, or a contract for training and education;
 - Addition to or establishment of a suitable trust; or
 - Establishment, funding, and administration of an ABLÉ account for the individual's benefit.
2. Any contract trust, or other transaction relating to the individual's property and business affairs, if the court determines that the transaction is in the best interests of the individual.

The factors the court must consider when deciding whether to approve a protective arrangement or other transaction are found in [Minn. Stat. § 524.5-411\(e\)](#) (revisor.mn.gov/statutes/cite/524.5-411). The court will primarily consider what decision the individual would have made (if that information can be determined). The court will also consider other factors, including:

- The financial needs of the individual, and the needs of people who are dependent on them for support;
- The interests of creditors;
- Possible effect on the individual's income, estate, gift, inheritance, or other tax liabilities;
- Eligibility for governmental assistance with the goal of avoiding reliance on such programs;
- The previous pattern of giving or level of support of the individual;
- The existing estate plan;



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- The individual's life expectancy and the probability that the conservatorship will terminate before the death of the individual;
- Whether the individual's needs can be met from their remaining assets after any transfer is made, taking into account the effect of any transfer on eligibility for medical assistance long-term care services; and
- Any other factors the court considers relevant.

The court may appoint an agent, with or without bond, to assist in the accomplishment of any protective arrangement or other authorized transaction. The agent will have only the authority granted by the court and will be discharged after reporting to the court all matters relating to the order of appointment.

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Chapter 4 WHO MAY ACT AS GUARDIAN OR CONSERVATOR

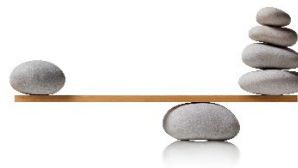
Who the Court May Appoint as Guardian or Conservator

The court may appoint any adult as the guardian or conservator for an individual who is incapacitated if the adult has the ability to fulfill the duties of a guardian or conservator. Examples of adults who might be appointed as guardian or conservator include:

- The individual's spouse;
- An adult child of the individual;
- An individual's parent;
- A person who has lived with the individual for a period of 6 months or more;
- An adult related to the individual by blood, adoption, or marriage;
- A professional guardian or conservator (may be an individual or agency); or
- Any other adult.

How Guardians and Conservators Are Chosen

The court must consider qualified persons based on an order of priority that is found in statute. See Minn. Stat. §§ [524.5-309](#) and [524.5-413](#) (revisor.mn.gov/statutes/cite/524.5-309 and revisor.mn.gov/statutes/cite/524.5-413).



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The court's main concern when deciding who to appoint as guardian or conservator is what is best for the respondent. The court may consider a proposed guardian's or conservator's religious, cultural, racial, and ethnic background when determining suitability.

Here are some, but not all, relevant factors to consider and evaluate when nominating a person to serve as a guardian or conservator of an individual who is incapacitated or impaired:

- Does the individual have a sufficient understanding or mental ability to express a preference of who is appointed as their guardian or conservator?
- Is there regular and appropriate interaction between the individual and the proposed guardian or conservator?
- Is the proposed guardian or conservator interested in, committed to, and able to advocate for the welfare and rights of the individual?
- Does the proposed guardian or conservator understand the individual's needs in all areas of the individual's life?

Frequently Asked Questions (FAQs)

1. **Can more than one guardian or conservator be appointed?** Co-guardians or co-conservators can be appointed. There is no statutory limit on the number of guardians or conservators who may be appointed for an individual. When co-guardians or co-conservators are appointed, ALL signatures are required for written consent and annual reports, which requires agreement with all decisions. Co-guardians and co-conservators are expected to work together to meet the needs of the person subject to guardianship or conservatorship.
2. **Must the guardian or conservator live in the same city or state as the respondent or person subject to guardianship or conservatorship?** There are no residency requirements for a guardian or conservator, but they should be able to maintain a current understanding of the physical and mental status and needs of the person subject to guardianship or conservatorship. The guardian or conservator must be available to carry out all the powers and duties granted to them by the court. All guardians and conservators, even those out of state, must follow all Minnesota law requirements, including annual reporting and background study requirements.

For example, a person in need of a guardian or conservator may live in Minneapolis, Minnesota, with a brother in Chicago, Illinois, who is willing to act as a guardian or conservator. In such a situation, the brother should not be prevented from becoming a guardian or conservator solely because of where he lives if he is otherwise able to carry out his powers and duties. This may be a situation where co-guardians or co-conservators would work well (one may live out of town, and the other nearby).



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3. **Can a person’s service provider be appointed as guardian or conservator?** A person cannot serve as a guardian or conservator and at the same time provide residence, **custodial** care, medical care, employment training, or other care or services for which they are paid. The only exception is if the guardian or conservator is related to the respondent by blood, marriage, or adoption. See Minn. Stat. §§ [524.5-309\(c\)](#) and [524.5-413\(d\)](#) (revisor.mn.gov/statutes/cite/524.5-309 and revisor.mn.gov/statutes/cite/524.5-413).

For example, a paid personal care assistant (PCA) may not serve as a guardian to an individual under their care unless they are related to the person.

NOTE: there may be other restrictions on the PCA through the Department of Human Services rules and regulations or their employer.

4. **What background checks are required for proposed guardians and conservators?** A proposed guardian or conservator must submit to two background checks, and the results must be filed with the court. See [Minn. Stat. § 524.5-118](#) (revisor.mn.gov/statutes/cite/524.5-118). The two background checks are:
- Maltreatment and state licensing agency check through the Department of Human Services (DHS); and
 - Criminal history check through the Bureau of Criminal Apprehension (BCA).

If the guardian or conservator is a *professional* guardian or conservator, the law specifies that the two background checks (maltreatment and state licensing agency check and criminal history check) must be done on all individuals employed by the proposed guardian or conservator who will be responsible for exercising duties under the guardianship or conservatorship.

The background check requirements are waived if the proposed guardian or proposed conservator is:

- A state agency;
- A parent or guardian of an individual who has a developmental disability if the parent or guardian has raised the individual in the family home until the time the petition is filed (unless counsel for the individual recommends a background study); or
- A bank with trust powers, bank and trust company, or trust company.

When are these background checks required?

According to Minnesota law, the court must require these background checks **before** appointing a guardian or conservator. The two background checks are also required **every 5 years** after the appointment if the person continues to serve as a guardian or conservator.



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What are the procedures for the background checks?

The procedures are described in the [Notice to Proposed Guardians and Conservators Regarding Background Check Requirements \(GAC104\)](#), which is available on the Minnesota Judicial Branch (MJB) website (mncourts.gov/GetForms.aspx?c=21&f=445). They are also listed below:

For the **maltreatment and state licensing agency check** through DHS, the proposed guardian or proposed conservator will do the following:

- 1 . Complete the “Guardian and Conservator Maltreatment and Licensing Agency Checks” form, which is available on the [DHS website](#) (mn.gov/dhs/general-public/background-studies/for-entities/guardians-and-conservators/).
- 2 . Submit the completed form and applicable fee to DHS at the address listed on the form. **NOTE:** If there is a fee waiver on file with the court, then submit the form to court administration instead (in person, mail, or eFile)
- 3 . Once DHS completes the maltreatment and state licensing agency check, DHS will file it directly with the court.

For the **criminal history check** through BCA, the proposed guardian or proposed conservator will do the following:

- 1 . Complete the [Guardian and Conservator Criminal History Check Consent Form \(GAC121\)](#), which is available on the Minnesota Judicial Branch website (mncourts.gov/GetForms.aspx?c=21).
- 2 . Get fingerprinted. Information about fingerprinting is available on the [BCA’s website](#) (mn.gov/boards/cbc/fingerprint-card/locations/).
- 3 . Submit the completed criminal history check consent form, fingerprint card, and applicable fee to the BCA at the address listed on the form. **NOTE:** If there is a fee waiver on file with the court, then include a copy of the fee waiver order when you submit the consent form and fingerprint card to the BCA.
- 4 . Once BCA completes the criminal history check, BCA will file it directly with the court.

What happens after the two background checks are completed?

The Department of Human Services and the Bureau of Criminal Apprehension will return the results to the court. The maltreatment and state agency licensing checks and criminal history checks filed with the courts will be considered confidential. When a document in a court file is confidential, it is not accessible to the parties or to the public without a court order. Information about [requesting access to confidential documents](#) in court files is available on the MJB website (mncourts.gov/GetForms.aspx?c=11&p=111).



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If the proposed guardian or conservator believes the background study results contain incorrect information, they must contact the Bureau of Criminal Apprehension (BCA) or the Department of Human Services (DHS) directly.

5. **How do you find a *professional* guardian or conservator?** As noted above ([“Who the Court May Appoint as Guardian or Conservator”](#)), an individual’s family member or friend may be appointed to serve as a guardian or conservator. Another option is a **professional** guardian or conservator.



A professional guardian or conservator charges fees for their services and may be an individual, an organization, or a business.

The Minnesota Judicial Branch:

- Does not provide professional guardians or conservators; and
- Does not refer people to specific individuals for hire.

There are several groups that may have information about professional guardianship and conservatorship service providers:

- The [Minnesota Association for Guardianships & Conservatorships \(MAGiC\)](#) is a nonprofit organization whose members include professional guardians and conservators (minnesotaguardianship.org). They have an online member directory.
- [The Arc Minnesota](#) provides information and assistance to support individuals with disabilities and their families (arcminnesta.org).
- [LawHelpMN.org](#) has a “Guardianships and Conservatorships” Fact Sheet and other resources on their website (lawhelpmn.org/self-help-library/planning-ahead-elder-law/guardianship-and-conservatorship).

Another place to find information is under the “resources” tabs in the online Help Topics on the Minnesota Judicial Branch website:

- [Guardianship](#) (mncourts.gov/Help-Topics/Guardianship.aspx); and
- [Conservatorship](#) (mncourts.gov/Help-Topics/Conservatorship.aspx).



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Chapter 5 RESPONSIBILITIES OF GUARDIANS AND CONSERVATORS

On-Going Responsibilities of Guardians and Conservators

According to Minnesota law, **a guardian or conservator shall be subject to the jurisdiction of the court at all times and in all things.** In this sense, the guardian or conservator acts as an agent, or representative, of the court. Despite the possibility of being given very broad powers, the guardian or conservator is accountable to the court in decisions made on behalf of the person subject to guardianship or person subject to conservatorship. A guardian or conservator's actions are subject to review and direction by the court. See [Minn. Stat. § 524.5-111](http://revisor.mn.gov/statutes/cite/524.5-111) (revisor.mn.gov/statutes/cite/524.5-111).

Overall, the ongoing responsibilities of the guardian or conservator include:

- To carry out duties and responsibilities granted to them by the court.
- To abide by any restrictions, either by statute or court order, placed on their powers. For example, conservators are not allowed to sell personal property or sell real estate without notice to the person subject to conservatorship. Guardians are not allowed to consent to sterilization, psychosurgery, electroshock, experimental procedures, or any other medical procedure which violates known conscientious, religious, or moral beliefs of the person subject to guardianship without prior order from the court.
- To comply with the **yearly** reporting requirements (**NOTE:** there is more information about the reporting requirements in Chapter 6):

Guardians

[Minn. Stat. § 524.5-316\(a\)](http://revisor.mn.gov/statutes/cite/524.5-316) (revisor.mn.gov/statutes/cite/524.5-316) requires the guardian to report to the court about how the person subject to guardianship is doing. This report is called the “**Personal Well-Being Report.**” The requirements include:

- The guardian's report must be filed at least yearly (annually), and whenever ordered by the court.
- The guardian must give a copy of the report to the person subject to guardianship and to interested persons of record with the court.
- The report must be in English.



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- As of April 15, 2024, guardians must use [MyMNGuardian \(MMG\)](#) to create the report, unless a judicial officer has granted permission to fill out a paper form (mncourts.gov/Help-Topic/MyMNGuardian.aspx).

Conservators

[Minn. Stat. § 524.5-420\(a\)](#) (revisor.mn.gov/statutes/cite/524.5-420) requires the conservator to report to the court about the administration of the estate of the person subject to conservatorship. The requirements include:

- The conservator's report is required:
 - Yearly (annually), unless the court directs otherwise; AND
 - When the conservatorship terminates (ends); AND
 - At other times as the court directs.
- The report must be in English.
- Conservators must use [MyMNConservator \(MMC\)](#) to create the report (mncourts.gov/Help-Topics/MyMNConservator.aspx).
- To comply with the reporting requirements found in Minn. Stat. §§ [524.5-316\(b\) and \(d\)](#) and [524.5-420\(d\)](#) (revisor.mn.gov/statutes/cite/524.5-316 and revisor.mn.gov/statutes/cite/524.5-420), which are described below. Essentially, these statutes require the guardian and conservator to report to the court when they have experienced certain events such as the following:
 - They are removed for cause from serving as a guardian or conservator;
 - They have a professional license denied, conditioned, suspended, revoked, or canceled;
 - They are found civilly liable in an action that involves fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
 - They file for or receive bankruptcy protection;
 - A civil monetary judgment is entered against them;
 - They are convicted of a crime other than a petty misdemeanor or traffic offense; or

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- They have an Order for Protection (OFP) or harassment restraining order (HRO) issued against them.
- To maintain a current understanding of the needs of the person subject to guardianship or person subject to conservatorship. This includes maintaining current knowledge of the individual's diagnosis, prognosis, treatments, care plan and needs through regular and frequent visits with them as well as frequent contacts with care providers.
- To seek out services and benefits or entitlements which the person subject to guardianship or person subject to conservatorship may need or is eligible for, and to ensure that the individual receives all services and benefits or entitlements to which they are entitled.
- To notify the person subject to guardianship or person subject to conservatorship, and interested persons of record with the court, annually and in writing, of the right to have the guardianship or conservatorship modified or terminated and of the right to request other appropriate relief.



The guardian or conservator must be aware at all times that the only authority they have over the person subject to guardianship or person subject to conservatorship is what has been granted by the court, and no more.

Respect for the rights maintained by the person subject to guardianship or person subject to conservatorship must remain a primary concern of the guardian or conservator in all matters and in all decisions. The guardian or conservator must exercise their powers in a way which allows the individual as much independence as possible.

Does the Guardian and Conservator Act as an Advocate?

Yes. An advocate is a person who speaks in favor of something, someone who makes recommendations. An advocate argues for a cause, defends beliefs, or supports a position. An advocate does these things on behalf of another person.

An interested person does not necessarily have to be appointed guardian or conservator to help a vulnerable adult. A number of adults need some help in making decisions. Some have family or friends to help them. There are laws to protect those who cannot protect themselves, but often these laws do not work unless there is someone who takes a personal interest in a vulnerable adult's welfare - an adult who acts as an advocate. Upon appointment, the guardian or conservator assumes the role of an advocate.

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How does a Guardian or Conservator Advocate Effectively?

The guardian or conservator is appointed to make decisions which will be in the best interest of the person subject to guardianship or person subject to conservatorship and which will protect that individual's civil and legal rights and personal freedoms. In order to fulfill their duties, the guardian or conservator must become familiar with the individual's needs, beliefs, and preferences. The guardian or conservator must then make a choice that reflects those beliefs, needs, and preferences. To do this, the guardian or conservator must become informed about what services the individual is entitled to and which services will meet the individual's needs. Actively participating in the individual's life is the most meaningful way to obtain the information required to make decisions for them.

It is not necessary for a guardian or conservator to know every law, right, entitlement, or service that may affect the person subject to guardianship or person subject to conservatorship. There are advocacy organizations, and state and local agencies in the community which can provide information regarding various services and entitlements, how to access them, and to help in understanding and protecting the rights of the person subject to guardianship or person subject to conservatorship.

It is often helpful to seek assistance from or to join an organization that provides information, advocacy, and support services that address the needs of the person subject to guardianship or person subject to conservatorship. Such organizations are usually a good source of support for family members or caregivers.

Powers and Duties of the Guardian

The powers and duties of a guardian are governed by [Minn. Stat. § 524.5-313](https://www.revisor.mn.gov/statutes/cite/524.5-313) (revisor.mn.gov/statutes/cite/524.5-313). The guardian may have additional powers granted by the court, but the court will only grant to a guardian those powers necessary to meet the demonstrated needs of the person subject to guardianship.

Custody of the person subject to guardianship and establish the place of residence:

The power to have custody of and to determine the place of residence of the person subject to guardianship within or outside the state.

The guardian can change the place of residence of the person subject to guardianship. Additionally, any other interested person can petition the court to begin a change of residence. The guardian can change the individual's place of residence, even if it is against the individual's wishes, unless a petition is filed which challenges the move, and the court agrees the move is not in the best interests of the person subject to

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guardianship. The guardian must notify interested persons at least 14 days in advance of a permanent change in the primary dwelling or a permanent move to a facility See [Minn. Stat. § 524.5-316](https://revisor.mn.org/statutes/cite/524.5-316)(d)(2) (revisor.mn.org/statutes/cite/524.5-316) for other requirements and exceptions.

The person subject to guardianship may not be admitted to any regional treatment center, except after a commitment hearing in which the court orders the admission, for outpatient services, or for temporary care for a specific period of time not to exceed 90 days in any calendar year.

Before deciding to change an individual's residence, it is good practice for the guardian to consider:

- Are the living arrangements appropriate and the least restrictive?
- Do the living arrangements reflect the prior lifestyle of the person subject to guardianship, and is the person subject to guardianship satisfied with the current living arrangements?
- Do the living arrangements meet the needs of the individual with the least amount of intrusion on their privacy and independence?
- Are the living arrangements clean and safe?
- Are needed support services available?
- If the person subject to guardianship resides in a care facility, are there individual plans in place to assure that their personal and medical needs will be met for activities of daily living and recreation?
- Are there plans in place, as appropriate, to move to a less restrictive setting?

Provide for care, comfort, and maintenance needs:

The duty to provide for the individual's care, comfort, maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and whenever appropriate, training, education, and habilitation or rehabilitation. The guardian has no duty to pay for these requirements out of their own personal funds.

Whenever possible or appropriate, the guardian should meet these needs through governmental benefits or services to which the person subject to guardianship is entitled or eligible, rather than their estate. Failure to satisfy the needs and requirements of this clause is grounds for removal of the guardian, but the guardian does not have any personal or financial liability.



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In order to perform this duty, it is good practice for the guardian to carry out the following functions:

- The guardian has meaningful visits with the person subject to guardianship and at least one other communication with a care professional or interested party, at least once a month, or as often as necessary to assure the individual's well-being and to determine the individual's status.
- The guardian keeps a written summary of visits and other communication related to the guardianship. The guardian keeps records regarding the person subject to guardianship. The guardian is available for routine and emergency communications.
- The guardian promotes the care, comfort, and maintenance of the person subject to guardianship. The guardian knows the individual's attitude towards their current situation. The guardian is aware of what was the individual's basic, original physical appearance, and psychological and emotional state.
- The guardian knows the condition of the individual's personal items.
- The guardian knows the religious faith and church affiliation of the individual and helps to maintain that participation as desired.

Take reasonable care of personal effects:

The duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the person subject to guardianship, and, if other property requires protection, the power to seek appointment of a conservator.

Reasonable care must be taken with the property. Personal property should be secured and may be appraised at the guardian's discretion. Depriving the person subject to guardianship of the use of their personal belongings must be balanced against the possibility of the items disappearing by gift, theft, or otherwise. Family pictures, items of sentimental or religious value, and items of personal property may be stored.

The guardian must complete and file a *Notice of Intent to Dispose of Clothing, Vehicles, Furniture, or Other Personal Effects* in the manner required in [Minn. Stat. § 524.5-313](#) (revisor.mn.gov/statutes/cite/524.5-313), before the disposition or sale of the personal belongings of the person subject to guardianship. The Minnesota Judicial Branch publishes the [Notice of Intent to Dispose of Clothing, Vehicles, Furniture, or Other Personal Effects \(GAC 12-U\)](#) online (mncourts.gov/GetForms.aspx?c=21).

The notice must inform the person subject to guardianship of the right to object to the disposition of the property within 10 days of the date of mailing of the notice and to petition the court for review of the guardian's proposed actions. The notice of objection must be served on the

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guardian by mail or in person, unless the person filing the objection is the person subject to guardianship. Once the guardian is served with notice of objection, the property may not be disposed of unless the court approves of the disposition after a hearing.

Consent to medical or other professional care:

The power to give necessary consent to enable the person subject to guardianship to receive necessary medical or other professional care, counsel, treatment, or service.

The guardian shall not consent to any medical care for the person subject to guardianship which violates their known conscientious, religious, or moral belief. No guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court. The guardian must exercise informed consent in making medical decisions.

Please see Chapter 7 (the “Medical Decisions” section) for a description of the process guardians must follow when making medical decisions on behalf of the person subject to guardianship.

Contracts:

If there is no conservator appointed, the power to approve or withhold approval of any contract the person subject to guardianship makes, except for necessities.

Supervisory authority:

The duty and power to exercise supervisory authority over the person subject to guardianship in a manner that limits the individual’s civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

According to [Minn. Stat. § 524.5-313\(c\)\(6\)](https://www.revisor.mn.gov/statutes/cite/524.5-313) (revisor.mn.gov/statutes/cite/524.5-313), a guardian may not restrict the ability of the person subject to guardianship to communicate, visit, or interact with others, including receiving visitors, or making or receiving telephone calls, personal mail, or electronic communications through social media, or participating in social activities, unless the guardian has good cause to believe restriction is necessary because the interaction with the person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship, and there is no other means to avoid such significant harm.

If restrictions are imposed, the guardian must provide written notice of the restrictions to the court, to the person subject to guardianship, and to the person subject to the restrictions. The person subject to guardianship and the person subject to the restrictions may petition the court to

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remove or modify the restrictions. There are forms for this online at www.mncourts.gov/forms (choose the “Guardianship and Conservatorship” category).



NOTE: the guardian must also include information about the restrictions in the annual Personal Well-Being Report.

ABLE accounts, service, legal actions:

The court may grant the guardian the power to establish an “Achieving a Better Life Experience Act of 2014” account (ABLE) under section 592A of the Internal Revenue Code. The guardian may only establish the account but may not administer the ABLE account in their capacity as guardian. They may appoint or name a person to exercise signature authority over an ABLE account.

If there is no conservator appointed for the person subject to guardianship, the court may grant the guardian the power to apply on behalf of the individual for any assistance or benefits available to them through any unit of government.

If there is no conservator appointed, the guardian may have the duty and power to take legal action on behalf of and represent the person subject to guardianship in all civil court matters. The guardian may not settle or compromise any claim or debt owed to the individual without court approval.

Perform annual duties:

Guardians and co-guardians must use [MyMNGuardian \(MMG\)](http://mncourts.gov/Help-Topics/MyMNGuardian.aspx), an online application, to file the annual reports and affidavits of service (mncourts.gov/Help-Topics/MyMNGuardian.aspx).

You can find links to self-paced training, help videos, forms, and other resources on the Minnesota Judicial Branch website. [MyMNGuardian](http://mncourts.gov/Help-Topics/MyMNGuardian.aspx) (mncourts.gov/Help-Topics/MyMNGuardian.aspx) is an online tool that helps Guardians create the Personal Well-Being Report and Affidavits of Service.

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Annual Personal Well-Being Report

According to [Minn. Stat. § 524.5-316](https://revisor.mn.gov/statutes/cite/524.5-316) (revisor.mn.gov/statutes/cite/524.5-316), the guardian must prepare and file an annual report of personal well-being as ordered in the *Order Appointing Guardian* at least annually (and whenever ordered to do so by the court). The guardian must give a copy of the Personal Well-Being Report to the person subject to guardianship and to interested persons of record with the court. Also, the guardian must file the Personal Well-Being Report with the court within 30 days of the anniversary date of the appointment of the guardian. The anniversary date is the date the judicial officer signed the *Letters of Guardianship*. If the annual report is not filed within 60 days of the required date, the court may schedule a hearing or issue an *Order to Show Cause* requiring the guardian to file the report or attend a hearing to explain to the judicial officer why they have not filed the report.

Details about the annual reporting duties, including what the Personal Well-Being Report must contain are found in Chapter 6.

Annual Notice of Rights

The guardian must fill out the *Annual Notice of Right to Petition for Termination or Modification* and send a copy to the person subject to guardianship and to interested persons of record with the court within 30 days after the anniversary date of appointment of the guardian. This notice informs the person subject to guardianship that they have a right to end or modify the guardianship. The *Annual Notice of Right to Petition* does not need to be filed with the court.

Bill of Rights

The *Bill of Rights* must be sent to the person subject to guardianship and to interested persons of record with the court within 30 days after the anniversary date of the appointment of the guardian. This document informs the person subject to guardianship that they have specific rights given to them by statute. The *Bill of Rights* does not need to be filed with the court.

Affidavit of Service

The *Affidavit of Service* is proof that the guardian served the person subject to guardianship and interested persons of record with the court with the required annual report and other documents. The *Affidavit of Service* must be filed with the court but does not need to be sent to the person subject to guardianship or other interested parties.

Keep the court promptly informed of changes regarding the guardian:

Minn. [Minn. Stat. § 524.5-316\(b\)](https://revisor.mn.gov/statutes/cite/524.5-316) (revisor.mn.gov/statutes/cite/524.5-316), requires a guardian to report in writing to the court within 30 days of certain events happening. The written report should include details such as the case number (also known as court file number) and the court

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location. The guardian must also give a copy of the written report to the person subject to guardianship and to interested persons of record with the court.

The Minnesota Judicial Branch publishes a form for this purpose called [Guardian/Conservator Report](#) (form number GAC109) (www.mncourts.gov/GetForms.aspx?c=21&f=447).

A guardian must report in writing to the court within **30 days** of any of these events:

- The guardian is removed for cause from serving as a guardian or conservator;
- The guardian has a professional license listed under Minn. Stat. § 524.5-118, subd. 2a, denied, conditioned, suspended, revoked, or canceled, and if so, the licensing agency and license number, and the bases for denial, condition, suspension, revocation, or cancelation of the license;
- The guardian is found civilly liable for fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
- The guardian files for or receives protection under the bankruptcy laws;
- The guardian has a civil monetary judgment entered against the guardian;
- The guardian is convicted of a crime other than a petty misdemeanor or traffic offense;
- The guardian has an order for protection (OFP) or harassment restraining order (HRO) issued against them.

As noted above, the guardian must provide the person subject to guardianship and interested persons of record with the court a copy of the written report. The court may decline to appoint and may remove a person as guardian for failure to report any of the occurrences listed above.

Keep all known interested persons informed of status changes regarding the person subject to guardianship:

Minn. [Minn. Stat. § 524.5-316\(d\)](#) (revisor.mn.gov/statutes/cite/524.5-316), requires a guardian to inform all known interested persons about certain situations involving the person subject to guardianship (unless communication is prohibited by court order). There are different time requirements (1 day and 14 days) for the notifications.

- **1 Day.** No later than 1 day after learning about any of these experiences, the guardian must notify all interested persons about:
 - A significant or unexpected change in health or medical condition requiring physician treatment or hospitalization;

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- A significant situation that requires action by ambulance, law enforcement, or fire department; or
- Death of the person subject to guardianship. **NOTE:** The guardian must also notify the court of the individual's death.
- **At Least 14 Days.** At least 14 days prior to (before) a permanent change in:
 - The primary dwelling of the person subject to guardianship; or
 - The permanent move to a nursing home, mental health facility, or other facility – unless the move is by prior court order.

EXCEPTION: If the change is because of accident, injury, illness, or other involuntary actions of the person subject to guardianship, advanced notice is not required. However, the guardian must notify interested persons within 7 days of such a move that is caused by the individual's involuntary actions.

Powers and Duties of the Conservator

In order to effectively carry out the responsibilities as conservator, careful record keeping is necessary for annual accounting purposes. Also, the conservator must establish a separate account to disburse and deposit money belonging to the person subject to conservatorship. The conservator should not *co-mingle* assets at any time. It is the conservator's responsibility to manage and invest the assets of the person subject to conservatorship for the benefit of the individual.



What does "co-mingle" mean?

Co-mingle means to mix or combine.

If the income of the person subject to conservatorship is insufficient to meet their needs, the conservator may have to borrow money in the name of the person subject to conservatorship, and on their behalf. Other options for the conservator to consider include selling assets belonging to the person subject to conservatorship, and applying on behalf of the individual for federal, state, or county financial benefits or service resources. The conservator must first seek court approval before selling real estate or conducting transactions requiring court approval



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under [Minn. Stat. § 524.5-411](http://revisor.mn.gov/statutes/cite/524.5-411) (revisor.mn.gov/statutes/cite/524.5-411). The conservator should seek legal advice before selling other property or assets or spending large amounts of money.

The Minnesota Judicial Branch publishes [forms for asking for court approval](http://mncourts.gov/GetForms.aspx?c=21) (mncourts.gov/GetForms.aspx?c=21).

The powers and duties of a conservator are governed by [Minn. Stat. § 524.5-417](http://revisor.mn.gov/statutes/cite/524.5-417) (revisor.mn.gov/statutes/cite/524.5-417). The court shall grant to a conservator only those powers necessary to provide for the demonstrated needs of the person subject to conservatorship.

Conservator's duties after appointment:

Once appointed, the conservator must complete the following tasks:

- Within 60 days of appointment, prepare an inventory of all property in [MyMNConservator \(MMC\)](http://mncourts.gov/conservators) (mncourts.gov/conservators), being sure to check for all bank accounts, stocks, bonds, and real estate in name of the person subject to conservatorship.
NOTE: The conservator should give each account a name and NOT use full account numbers or credit/debit card numbers. For example: Wells Fargo 1, Wells Fargo 2.
- File a change of address with the post office to ensure all future mail is forwarded to the conservator to aid in locating assets (1099s issued at year end can often help locate additional assets). Personal mail, however, must be returned to the person subject to conservatorship unopened.
- Take control of all property and assets, and make sure they are adequately protected against loss.
- Obtain and maintain any required bond. See Minn. Stat. §§ [524.5-415](http://revisor.mn.gov/statutes/cite/524.5-415) and [524.5-416](http://revisor.mn.gov/statutes/cite/524.5-416) (mncourts.gov/statutes/cite/524.5-415 and mncourts.gov/statutes/cite/524.5-416).
- Keep thorough and accurate records. All conservator accounts are subject to audits and reviews. The following steps are recommended:
 - Establish a separate conservatorship bank account to receive and disburse all deposits and make all payments.
 - Retain and organize all documentation related to funds going through the conservatorship account.
 - Following the financial statements, enter transactions on a regular basis in the account report in [MMC](http://mncourts.gov/conservators) (mncourts.gov/conservators).

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- Seek approval from the court before making large purchases. Court approval may be made without notice or hearing. Forms and instructions for asking for approval are available on the [Minnesota Judicial Branch website](http://mncourts.gov/GetForms.aspx?c=21) (mncourts.gov/GetForms.aspx?c=21).
- Be prepared to provide official bank statements for the audits. Spreadsheets and online transaction printouts are not sufficient for audit purposes. Online statements are okay if they include all transactions, running balance totals, and all account ownership information. Generally, all 12 monthly bank statements are needed every year for the audit and review.
- Be prepared to include documentation for all asset account types, including CDs, life insurance, IRAs, other investments, prepaid burials, etc. This documentation is needed for the audit and review.
- Be prepared to provide canceled (clear) checks from the bank, if available. Check copies provided with the statement are acceptable in the event your bank does not return physical checks. Duplicate check copies are not an acceptable replacement.



NOTE: You can upload records into MMC for storage. Financial documents that are uploaded in MMC for storage are NOT filed with the court. They stay in MMC for review purposes only.

- Determine and collect all income.
- Pay the debts of the person subject to conservatorship as they become due.
- Invest all funds not currently needed, taking care to protect the assets.
- Determine whether the person subject to conservatorship must file and pay income taxes and determine whether real estate taxes are due.

Pay reasonable charges for support, maintenance, and education of the person subject to conservatorship:

The conservator has the duty to pay reasonable charges on behalf of the person subject to conservatorship.

A conservator has no duty or obligation to pay for any of these charges for the person subject to conservatorship from the conservator's own funds. Whenever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the person subject to conservatorship is entitled, rather than from the individual's estate.

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Bills and statements should issue in the name of the person subject to conservatorship. All documents signed by the conservator on behalf of the person subject to conservatorship should indicate that relationship, to avoid incurring personal liability. This means that the conservator must first make sure that the service has been rendered, and that the charge is a reasonable one.

A conservator may charge a reasonable fee for the providing necessary conservatorship services to the person subject to conservatorship. The conservator must maintain an accurate record of services they have performed, the time spent, and the expenses incurred in performing duties as conservator.

The following are examples of reasonable charges or expenses a person subject to conservatorship might have:

- For an individual residing at home:
 - Mortgage or rent;
 - Insurance premiums;
 - Taxes;
 - Utilities;
 - Maintenance of the home;
 - Needed in-home services for the individual;
 - Medical expenses; and
 - Clothing and other personal items.
- For an individual residing in a facility:
 - Reviewing the level of care assessment (case-mix) of the person subject to conservatorship to be sure the facility's charge is correct for the level of care required;
 - Ensuring that the person subject to conservatorship has sufficient funds on hand for personal spending; and
 - Reviewing and monitoring the medical and personal services provided.

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Pay all just and lawful debts of the person subject to conservatorship and pay reasonable charges for support, maintenance, and education of the individual's spouse and dependents:

The conservator must pay all debts of the person subject to conservatorship as they become due. The conservator is also responsible for filing income tax returns on behalf of the person subject to conservatorship. The conservator must also pay the reasonable charges incurred for the support, maintenance, and educational expenses of the spouse and dependents of the person subject to conservatorship. Upon court order, the conservator may be responsible for paying the reasonable support of any person unable to earn a livelihood who is legally entitled to support from the person subject to conservatorship.

Possess and manage the estate and collect all debts and claims:

One of the conservator's first duties is to take control of (possess) the property of the person subject to conservatorship. This involves conducting a comprehensive search for all assets the individual owns and can include arranging for transfer of title or possession to the conservatorship.

The conservator shall investigate and determine all debts and claims in order to pursue collection. If there is a need to protect assets, the conservator may, with the consent of the court, start lawsuits and act on behalf of the person subject to conservatorship. Also, the conservator must invest all funds, preserving, protecting, and conserving assets and producing as much income as possible with minimal risk to the principal asset.

The best source of information of what the person subject to conservatorship owns may be the person subject to conservatorship. Review with individual the financial records, such as current bank and broker statements, income tax returns, account ledgers, deeds, and insurance policies. The conservator has the right to enter the individual's safe deposit box and remove the contents, upon presenting a certified copy of their Letters of Conservatorship to the financial institution. If the box is rented with another person, that other person should be present when the conservator opens the safe deposit box.

Manage insurance:

It is important that the person subject to conservatorship be appropriately insured. The conservator must consider the following when inspecting the individual's insurance:

Real Property Insurance

Is the property adequately insured? Are the premiums current?



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Household Insurance

Does the policy contain adequate coverage?

Health Insurance

Is the policy cost-effective? Is there duplicate coverage with multiple policies? Is there Medicare A & B coverage?

Life Insurance

Locate any and all policies. Are premiums current? Is the insurance necessary?

Manage real estate:

Care and Maintenance of Real Estate

The conservator must arrange for the care and maintenance of the property such as cutting grass, snow shoveling, trash removal, and furnace inspection. When the conservator is appointed, they must determine the following:

- Who has access to the property? Should locks be changed?
- Is the property insured? Have the insurance premiums been paid?
- Are the real estate taxes current?
- Where is the abstract or certificate of title?

Sale of Real Estate

If the property the conservator wants to sell is the principal residence of the person subject to conservatorship, it must be determined that the individual will be unable to return to independent living. Conservators should consult with an attorney on such matters. Keep in mind the following requirements:

- Property cannot be given away.
- Get a doctor's statement to determine the physical health of the person subject to conservatorship and whether the individual is able to live independently or with assistance at home.
- Petition the court for permission to sell. Two disinterested licensed appraisers must appraise the property.
- Relatives may be given a chance to purchase at appraised value before the general public.

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- Property cannot be sold for less than the appraised price without court approval. If the sale takes longer than 6 months, the property may have to be reappraised.
- Never give up the abstract without getting a receipt.
- Before closing, have the court issue an order directing sale, order confirming sale, and obtain a certified copy of the current Letters of Conservatorship. A conservator's deed may need to be prepared by an attorney. Often the closing company wants to see these documents before closing.

What is the inventory?

An inventory of all assets owned by the person subject to conservatorship at the time of the conservator's appointment must be filed with the court, using MMC, within 60 days of the appointment. Appropriate accountings may be required to be filed with agencies administering benefits.

The inventory provides several pieces of information to the court:

- It serves as the initial listing of property for which the conservator will be held accountable.
- It assists the court in determining the sufficiency of the conservator's bond.
- It advises the court of the extent of the estate of the person subject to conservatorship, and indirectly, of the income likely to be received for the individual's support.

The inventory of the property includes:

- Real estate;
- Furniture and household goods;
- Corporation stocks and other investment accounts;
- Bank accounts;
- Certificates of Deposit (CDs);
- Receivables; and
- All other personal property.

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The conservator determines the fair market value of all assets listed in the inventory. However, the conservator may need the help of an appraiser to determine the value of property such as jewelry, artwork, and other valuables. The conservator may wish to hire an attorney to assist in preparing the inventory and filing it in MMC. If the conservator fails to file an inventory, the court may issue an *Order to Show Cause* requiring the conservator to appear at a hearing and may remove them as conservator.

Perform annual duties:

Annual Accounting, Bill of Rights, and Annual Notice of Rights

An annual account must be filed with the court that shows all receipts to and disbursements from the estate. The conservator must also give the person subject to conservatorship and interested persons of record with the court an Annual Notice of Rights to Petition within 30 days after the anniversary date of the conservator's appointment. The anniversary date is the date the Letters of Appointment are signed and dated by the judicial officer. This initial account should begin from the date of appointment, and it will use the figure for the personal property listed on the inventory. Later accounts will start with the ending balance from the account of the previous year.

No order settling or allowing an annual or final account shall be issued by the court without a hearing to approve the account and notice of the hearing provided to the person subject to conservatorship and interested persons. There must be a hearing on the final account at the death of the person subject to conservatorship or at the death or discharge of the conservator.

The Conservator Account Auditing Program (CAAP) and the Conservator Account Review Program (CARP)

CAAP will conduct an audit of the first annual account, and periodically after that.

CARP will conduct reviews of annual accounts on years that are not audited. The conservator will receive a letter from either program about the documentation the conservator will be required to provide.

A hearing is required for the settlement and allowance of the first annual account, then at least every 3-5 years, and for the final account. A hearing on the annual accounting may be ordered upon the request of the court or any interested party.

Keep the court informed of status changes regarding the conservator:

[Minn. Stat. § 524.5-420](https://revisor.mn.gov/statutes/cite/524.5-420) (revisor.mn.gov/statutes/cite/524.5-420) requires a conservator to report in writing to the court within 30 days of certain events happening. The written report should include details such as the case number (also known as court file number) and the court location. The conservator must also give a copy of the written report to the person subject to conservatorship and to interested persons of record with the court.

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The Minnesota Judicial Branch publishes a form for this purpose called [Guardian/Conservator Report](http://www.mncourts.gov/GetForms.aspx?c=21&f=447) (form number GAC109) (www.mncourts.gov/GetForms.aspx?c=21&f=447).

A conservator must report in writing to the court within **30 days** of any of these events:

- The conservator is removed for cause from serving as a guardian or conservator;
- The conservator has a professional license listed under Minn. Stat. § 524.5-118, subd. 2a, denied, conditioned, suspended, revoked, or canceled, and if so, the licensing agency and license number, and the bases for denial, condition, suspension, revocation, or cancellation of the license;
- The conservator is found civilly liable for fraud, misrepresentation, material omission, misappropriation, theft, or conversion;
- The conservator files for or receives protection under the bankruptcy laws;
- The conservator has a civil monetary judgment entered against them;
- The conservator is convicted of a crime other than a petty misdemeanor or traffic offense; or
- The conservator has an order for protection (OFP) or harassment restraining order (HRO) issued against them issued against them.

As noted above, the conservator must provide the person subject to conservatorship and interested persons of record with the court a copy of the written report. The court may decline to appoint and may remove a person as guardian or conservator for failure to report any of the occurrences listed above.

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Chapter 6 ANNUAL REPORTS FOR GUARDIANS AND CONSERVATORS

For GUARDIANS: Personal Well-Being Report

See [Minn. Stat. § 524.5-316](#) (revisor.mn.gov/statutes/cite/524.5-316). All Guardians and Co-Guardians must **report to the court in writing at least once a year (and whenever directed by the court to do so)**.

What must the guardian include in their report?

According to Minnesota law, the report must state or contain all the following:

- 1 . The **current** mental, physical, and social condition of the person subject to guardianship; AND
- 2 . The living arrangements for all addresses of the person subject to guardianship during the reporting period; AND
- 3 . Any restrictions placed on the right of the person subject to guardianship to communicate, visit, or interact with others, including receiving visitors or making or receiving telephone calls, personal mail, or electronic communications including through social media, or participating in social activities, and the factual bases for those restrictions; AND
- 4 . The medical, educational, vocational, and other services provided to the person subject to guardianship and the guardian's opinion as to the adequacy of the care of the person subject to guardianship; AND
- 5 . A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship; AND
- 6 . An address or post office box and a telephone number where the guardian can be contacted; AND
- 7 . If applicable, the amount of payment received as guardian for services rendered to the person subject to guardianship that the guardian received during the previous year that were not paid by county contract, and the guardian's current rates.

What is available through the Minnesota Judicial Branch to help the guardian prepare the Personal Well-Being Report?

You can find links to self-paced training, help videos, forms, and other resources on the Minnesota Judicial Branch website. [MyMNGuardian](#) (mncourts.gov/Help-Topics/MyMNGuardian.aspx) is an online tool that helps Guardians create the Personal Well-Being Report and Affidavits of

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Service. **NOTE: Starting April 15, 2024, using MyMNGuardian will be mandatory** (unless a judicial officer has given special permission to use paper forms).

[Forms and instructions](#) are available on the Minnesota Judicial Branch website (mncourts.gov/GetForms.aspx?c=21&p=109).

What does the guardian do with the Personal Well-Being Report?

Besides filing the written report with the court, the Guardian must make sure that the following things happen:

- 1 . The **person subject to guardianship** needs to receive at least 3 forms:
 - *Personal Well-Being Report*;
 - *Annual Notice of Right to Petition for Termination or Modification or Other Relief*; and
 - *Bill of Rights*.
- 2 . Each **interested person** needs to receive the *Personal Well-Being Report* and *Annual Notice of Right to Petition for Termination or Modification or Other Relief* (unless the interested person has opted out of receiving reports).

For CONSERVATORS: Annual Accounting (a Report Regarding the Administration of the Estate)

See [Minn. Stat. § 524.5-420](#) (revisor.mn.gov/statutes/cite/524.5-420). All Conservators and Co-Conservators must **report to the court in writing at least once a year, upon resignation or removal, upon termination of the conservatorship, and whenever directed by the court to do so.**

What must the conservator include in their report?

According to Minnesota law, the report must state or contain all the following:

- 1 . A listing of the assets of the estate under the conservator's control; AND
- 2 . A listing of the receipts, disbursements, and distributions during the reporting period; AND
- 3 . The report must also state an address or post office box and a telephone number where the conservator can be contacted.

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What is available through the Minnesota Judicial Branch to help the conservator prepare the Annual Accounting?

You can find links to self-paced training, help videos, forms, and other resources in the [“Conservator” Help Topic](#) on the Minnesota Judicial Branch website (mncourts.gov/Help-Topics/Conservatorship.aspx).

[MyMNConservator](#) (mncourts.gov/Help-Topics/MyMNConservator.aspx) is an online tool that helps Conservators create the Accounting Reports, Inventories, and Affidavits of Service. **NOTE: Using MyMNConservator is mandatory.**

What does the conservator do with the Annual Accounting?

The Annual Accounting is submitted online to the court through the MyMNConservator application. Minnesota law does not require Conservators to serve the Annual Accounting forms on the person subject to conservatorship or on interested persons.

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Chapter 7 DECISION MAKING

Considerations When Making Decisions

Guardians and conservators take on a very important task, to make decisions for another individual. This can be a very rewarding activity. The guardian or conservator must be careful to act in the individual's best interest and with the individual's preferences in mind.

This may require the guardian or conservator to learn from others who may know about the desires, lifestyle, or preferences of the person subject to guardianship or conservatorship.

Are there criteria by which to make decisions?

When making decisions, the guardian or conservator must:

- Take actions and make decisions that encourage and allow the maximum level of independent, or self-reliant, functioning on the part of the person subject to guardianship or conservatorship;
- Safeguard the decision-making powers of the person subject to guardianship or conservatorship so that they are not restricted beyond a clearly established need; and
- Make decisions only to the extent necessary to provide needed care and services for the person subject to guardianship or conservatorship.

What are the standards of ethical decision making?

Ethical substitute decision making assures:

- That no less restrictive means exist, including the use of technological assistance.
- That the potential benefit and harm to the person subject to guardianship or conservatorship have been weighed.
- That the individual's desires and preferences have been considered.

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- That the person subject to guardianship or conservatorship is involved and included in community settings and activities whenever reasonably possible.
- That reasonable efforts have been made to obtain the opinions of the relatives and other involved persons.

Standards of ethical decision making are based on the following principles:

Substituted Judgment:

Substituted judgment means the guardian or conservator makes decisions for the person subject to guardianship or conservatorship based on how the individual would have decided if they were able to do so for themselves. This standard assumes competence of the person subject to guardianship or conservatorship before incapacity when the individual would have been able to express an informed choice.

This requires that the guardian or conservator knew the individual, or they are able to find out this information by interviewing people who did know the person subject to guardianship or conservatorship before the individual became incapacitated. The guardian or conservator must also review any written statements or other declarations made by the person subject to guardianship or conservatorship before the individual became incapacitated.

A modified form of substituted judgment is codified in [Minn. Stat. § 524.5-411](https://revisor.mn.gov/statutes/cite/524.5-411) (revisor.mn.gov/statutes/cite/524.5-411), which allows the conservator to provide estate planning for the person subject to conservatorship. This can only be done with a hearing and with court approval. All persons that may be affected by the estate planning must be given notice of the hearing. Estate planning is not proper if it deprives the person subject to conservatorship of assets that would otherwise be used or applied for the individual's own benefit. For example, medical assistance planning that gifts (gives) all, or substantially all, of the individual's assets away is per se improper because funds are being diverted away from the person subject to conservatorship. If there are more than enough funds to provide for the individual's ongoing care, then excess funds might be properly gifted. Also, planning for transfers that take place only upon the death of the person subject to conservatorship may be appropriate.

Best Interest:

If the person subject to guardianship or conservatorship has always been considered incapacitated, then the guardian or conservator must make decisions that are in the best interest of the person subject to guardianship or conservatorship. *Best interest* has two parts:

- 1 . The first part considers the *wishes* of the person subject to guardianship or conservatorship.
- 2 . The second part considers the *benefits and harms to the person subject to guardianship or conservatorship* of a particular act or course of action based on reasonable alternatives and selects a reasonable alternative that provides the most benefit and least harm.

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These decisions require the guardian or conservator to obtain enough knowledge of the person subject to guardianship or conservatorship in order to make decisions on the individual's behalf that are in their best interest.

Less Restrictive Means:

In appointing a guardian or conservator for an individual, the court shall grant only those powers that are necessary to ensure the demonstrated needs of the individual are met. The court may issue other orders that will encourage the development of the maximum self-reliance and independence of the person subject to guardianship or conservatorship. Whenever possible, if there are other ways to meet the individual's needs that are least likely to interrupt, bother, or interfere with the desires, lifestyle, or preferences of the individual, these less restrictive means should be used.

Informed Consent:

Informed consent means that consent is valid only if the person giving the consent understands:

- The nature of what is being consented to;
- The benefits and the risks of harm; and
- The alternatives that are available to the person subject to guardianship or conservatorship if consent is given or if consent is not given.

Whenever deciding for the person subject to guardianship or conservatorship, the guardian or conservator should:

- Have the knowledge available to make a reasonable decision;
- Have the capacity or ability to make reasoned decisions based upon information that applies to the situation; and
- Give consent voluntarily and without coercion (in other words, there is no intimidation or pressure, either obvious or suggested, from another person).

This is referred to as **informed consent** or **informed decision making**.

How are the rights of the person subject to guardianship or conservatorship protected when making decisions?

A person subject to guardianship or conservatorship retains any civil or constitutional rights not specifically given away by the court. When giving consent, the guardian or conservator must protect these legal rights and interests of the person subject to guardianship or conservatorship and must take appropriate action when those rights are, or appear to have been, limited or violated. The guardian or conservator must take

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appropriate action on behalf of the person subject to guardianship or conservatorship according to the state and federal law which applies to the situation.

Must the wishes and preferences of the person subject to guardianship or conservatorship be considered in every decision?

Whatever the need may be, the guardian or conservator must always consider the wishes and preferences of the person subject to guardianship or conservatorship. An individual always has certain rights that must be protected by the guardian or conservator when making decisions. A guardian or conservator may not make decisions that restrict these rights.

A guardian may be given "the duty and power to exercise supervisory authority over the person subject to guardianship in a manner which limits civil rights and restricts personal freedom *only to the extent necessary* to provide needed care and services." See [Minn. Stat. § 524.5-313\(c\)\(6\)](#) (revisor.mn.gov/statutes/cite/524.5-313).

Rights of Persons Subject to Guardianship and Conservatorship

Minnesota law protects the rights of individuals who need a guardianship or conservatorship. These rights are fundamental, and a guardian or conservator has the responsibility to ensure that these rights are not violated. These rights must be reviewed and explained to the individual in a manner which they can understand.

What are the civil and constitutional rights of a person subject to guardianship or conservatorship?

A person subject to guardianship or conservatorship retains any civil or constitutional rights not specifically given away by the court.

- The right to be treated with dignity and respect;
- The right to due consideration of current and previously stated personal desires and preferences, including but not limited to medical treatment preferences, cultural practices, religious beliefs, and other preferences and opinions in decisions made by the guardian or conservator;
- The right to participate in decision making about and receive health care and medical treatment;
- The right to exercise control over all aspects of life unless delegated specifically to the guardian or conservator by court order;



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- The right to guardianship or conservatorship services individually suited to the conditions and needs of the person subject to guardianship or the person subject to conservatorship;
- The right to petition the court to prevent or initiate a change in abode;
- The right to care, comfort, social and recreational needs, employment, and employment supports, training, education, habilitation, and rehabilitation care and services, within available resources;
- The right to be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the clothing, furniture, vehicles, and other personal property and effects of the person subject to guardianship or person subject to conservatorship; to object to the disposition of personal property and effects; and to petition the court for a review of the guardian or conservator's proposed disposition of personal property and effects;
- The right to personal privacy;
- Right to communicate, visit, or interact with others, including receiving visitors or making or receiving telephone calls, personal mail, or electronic communications, including through social media, or participating in social activities, unless is the guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship, and there is no other means to avoid the significant harm. In all cases, the guardian shall provide written notice of the restrictions imposed to the court, to the person subject to guardianship, and to the person subject to the restrictions. The person subject to guardianship and the person subject to the restrictions may petition the court to remove or modify the restrictions;
- The right to marry and procreate, unless court approval is required first;
- The right to elect to or object to sterilization as provided in [Minn. Stat. § 524.5-313\(c\)\(4\)\(iv\)](#) (revisor.mn.gov/statutes/cite/524.5-313);
- The right at any time to petition the court for termination or modification of the guardianship or conservatorship, and any decisions made by the guardian or conservator in relation to powers granted, or for other appropriate relief;
- The right to be represented by an attorney in any proceeding or for the purpose of petitioning the court;
- The right to vote, unless restricted by the court;
- The right to be consulted, and to make decisions to the extent possible, about personal image and name, unless restricted by the court;



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- The right to be consulted, and to make decisions to the extent possible, about personal image and name, unless restricted by the court; and
- The right to execute a health care directive, including both health care instructions and the appointment of a health care agent, if the court has not granted a guardian any of the powers or duties under Minn. Stat. § 524.5-313(c)(1), (2), or (4).

Determining and Considering Wishes or Preferences

A guardian or conservator must always give consideration to the reasonable wishes of the person subject to guardianship or conservatorship. What should the guardian or conservator do if the wishes of the person subject to guardianship or conservatorship conflict with what the guardian or conservator thinks is in the individual's best interest?

Example 1

An elderly person subject to guardianship or conservatorship who is incapacitated, but not incompetent, is in need of at least partial daily supervision for medical or safety reasons but wishes to stay in their home rather than being placed in a more supervised living environment.

Example 2

A person with developmental disabilities who has limited independent living skills wishes to reside independently, rather than live in a home with supervised living services.

In both examples, the guardian is bound by law to consider the reasonable wishes of the person subject to guardianship. The guardian must then choose services that provide the needed level of support, but that are also the least restrictive type of support. For an elderly person, that may mean seeking in-home health care services and housekeeping services.

For the individual with developmental disabilities, services may include a 24-hour plan of care, but not 24-hour supervision. The individual may need assistance in planning menus, grocery shopping, learning homemaking skills, and money management.

What if the person subject to guardianship or conservatorship cannot speak or is not understandable?

Some people may have difficulty expressing their wishes due to a medical condition, a mental health problem, or a developmental disability. A guardian or conservator is required to get to know the person and how they communicate, to aid in making decisions. The guardian or conservator may need to seek assistance in determining the preferences of the person subject to guardianship or conservatorship by having the individual's communication skills assessed.

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For example, through a communication assessment, the guardian or conservator should be able to determine how the individual communicates. Some people may need some form of assistive technology to communicate. A speech pathologist with expertise with the speech and communication needs can be sought, for example, to assess individuals with speech delays due to developmental disabilities, individuals recovering from strokes, individuals recovering from a traumatic brain injury, or individuals experiencing dementia.

Consent or Denial Checklist

The questions below may be helpful when making a consent determination.

- Has the court modified the individual's rights in this area?
- Does the guardian or conservator have the legal authority to make the decision?
- Has the guardian or conservator determined whether or not this consent requires the review and approval of the court?
- Does the guardian or conservator understand the nature of what is being consented to?
- Does the guardian or conservator understand the benefits and the risk of harm to the person subject to guardianship or conservatorship if consent is, or is not, given?
- Has the guardian or conservator weighed the benefits and the risk of harm?
- Is the guardian or conservator aware of all the alternatives?
- Can the guardian or conservator give a reason for selecting this particular alternative?
- Is this the least restrictive, most normalized alternative given the individual's need for supervision and protection?
- Has the guardian or conservator obtained and weighed the opinion, religious, moral, or cultural beliefs, desires, and preferences of the person subject to guardianship or conservatorship?
- Has the guardian or conservator obtained and weighed the opinion of the nearest actively involved relatives?
- Has the guardian or conservator consulted the necessary experts for their opinion?
- Are all involved interested parties in agreement with this decision?

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- Is this decision a reasonable decision that would be made for any person regardless of disability, age, race, ethnicity, place of residence?
- Has the guardian or conservator determined what funding resources are necessary and available to pay for this alternative?
- Is the necessary funding available?
- Has the guardian or conservator determined whether this decision requires a revision to the individual's service plans?
- Has the guardian or conservator made the necessary changes to the individual's service plans?

Medical Treatment Decisions

A power often given by the court to a guardian is that of determining medical treatment. **Review the Letters of Guardianship to confirm if you have been granted this power.** The guardian should consider the currently expressed wishes of the person subject to guardianship, as well as all available information about the individual's past religious beliefs, values, and expressed wishes. The guardian should also seek input from involved family members.

When is it necessary to go to court for approval of medical treatment?

It is very important for guardians to consult an attorney in these situations. Psychosurgery, electro-convulsive therapy (ECT), sterilization, experimental treatment of any kind, or treatment which violates the known religious, conscientious, or moral beliefs of the ward, requires court approval after a special court hearing. To ask the court for approval, the guardian must file a petition. See [Minn. Stat. § 524.5-313\(c\)\(4\)](#) (revisor.mn.gov/statutes/cite/524.5-313).

In some cases, including where the person subject to guardianship expresses any objection to the proposed treatment, the guardian may need to request a hearing to obtain court approval on whether the treatment should be authorized or withheld. Depending on the circumstances, decisions to authorize termination of life-support may also require a court order.

What happens of the person subject to guardianship refuses treatment?

There may be times when a medical treatment is ordered which has been determined to be in the best interest of the person subject to guardianship, but they refuse the treatment. This can occur in any case but occurs most frequently in regard to administration of psychotropic

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medications. In these situations, the guardian with the power to consent to medical treatment may override the decision of the individual to refuse treatment.

If the person subject to guardianship refuses treatment, the guardian must determine what the refusal is based upon. Is the individual able to express a reasonable objection based on known religious, conscientious, or ethical beliefs? If so, the guardian may not consent even if treatment is in the individual's best interests.

If the individual's refusal is not based on any of the reasons above, and is not rational, the guardian does have the authority to override the refusal and consent to administration of the treatment despite the individual's refusal. When administering a treatment which a person subject to guardianship has refused, caution and protection must be used if it is necessary to physically or mechanically restrain the individual in order to administer the medication or treatment.

Guardians must use caution when overriding the refusal of the person subject to guardianship and assure that the solutions are solutions of last choice after every other less restrictive alternative has been considered and used or rejected, and this process has been sufficiently documented. In this situation, alternative, non-judicial means of securing consent are acceptable so long as they ensure a high degree of reliability, the final decision isn't being made by the person recommending or administering the treatment, and that there are adequate procedural protections in place for the person subject to guardianship. The person subject to guardianship may ask a court to review the guardian's decision.

If you have questions about your authority to make medical decisions on behalf of the person subject to guardianship, [talk to an attorney](https://www.mncourts.gov/Help-Topics/Find-a-Lawyer.aspx) (mncourts.gov/Help-Topics/Find-a-Lawyer.aspx).

Additional Considerations for Consents for Limiting Medical Treatment

This would include, but is not limited to:

- Consent for orders of DNR – Do Not Resuscitate;
- Withholding or withdrawing ventilators for assisted breathing;
- Withholding or withdrawing artificially administered nutrition and hydration; and
- Therapies such as kidney dialysis, chemotherapy or radiation, or surgery.



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For any medical treatment decisions beyond those which are fairly routine, the following steps are recommended:

- All interested parties should be involved so that all viewpoints are represented. This may help to minimize legal risks. All family members who are involved with the individual's care should be included and any other family members who may reasonably wish to be included should also be notified.
- Input should be solicited from others directly involved in the care of the person subject to guardianship, as they may have information about the individual's wishes.
- The physician should participate in a full discussion with the guardian, the person subject to guardianship (if at all possible), and other interested persons. The physician should be prepared to give a medically and ethically sound reason for the treatment recommendation. If the physician is not clear, do not make a decision until you understand the issue.
- The guardian will need to consult with the physician on these matters and may need to review the medical records, and should be aware of and understand the individual's:
 - History of and current general medical and psychiatric conditions and specific diagnoses and the cause and recent history of the individual's deterioration.
 - Details of the condition. For example, is the condition permanent and irreversible? Is the condition terminal? What are the prognosis and life expectancy with and without treatment?
 - The anticipated results and risks of the proposed treatment; the probable consequences if the treatment is AND is not given.
- A second medical opinion should be obtained regarding the medical and ethical soundness of the treatment recommendation, and to possibly consider alternative treatment options.
- The guardian should consult with an attorney and may need to request specific authority from the court.

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Chapter 8 SERVICES AND BENEFITS PLANNING

How to Plan for Services

A person subject to guardianship or conservatorship may be entitled to receive certain services or financial assistance, called entitlements, or certain benefits, if they meet specific eligibility requirements. The guardian or conservator has responsibility under Minnesota law to investigate to determine whether the person subject to guardianship or conservatorship is eligible for any of these programs. The individual may be eligible for certain entitlements or benefits based on their income, age, or medical condition.

How does a person apply for these entitlements and benefits?

To apply for these entitlements or benefits, contact a financial worker or case manager at the individual's local county social services office. Many advocacy and community organizations working with certain populations, such as the elderly or the disabled, can be contacted for information about these programs as well. For programs which are part of the Social Security Administration (SSA), application is made by contacting the SSA.

The guardian or conservator works with service providers and with the individual's case manager or social worker, if any, to identify needed services, eligibility for those services, and to plan for how those services will be provided. Any service should be provided with a specific goal in mind so that the guardian or conservator can monitor and evaluate the service to determine if the service is being provided as needed and as agreed.

When planning services, the guardian or conservator, in consultation with case managers/social workers, care providers, and family, should monitor and evaluate services to determine:

- That services are consistent with the individual's service or care plan;
- That services are directed to achieve outcomes/goals specifically identified for the individual;
- The extent to which providers are fulfilling their responsibilities;
- The extent to which services are coordinated between, or by, the guardian or conservator, the service provider, and the case manager;
- The individual's health and safety needs are being met;



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- The individual's civil and legal rights are being protected;
- The consumer and legal representative are satisfied with the services; and
- If changes are needed in the service plan or service delivery.

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Chapter 9 LEGAL PROCEDURES AND REQUIREMENTS

Procedures to Establish a Guardianship or Conservatorship

In this section, the basic steps necessary for a petitioner to begin the process of establishing guardianship or conservatorship are discussed. A petitioner may proceed with these actions with an attorney, or pro se, meaning without an attorney. A petitioner without an attorney is also called a “self-represented litigant” (SRL). The following information is meant to familiarize the petitioner with the overall process.

This information is not legal advice. It is recommended that an attorney who practices law in the area of guardianship and conservatorship be consulted. It is very important that a lawyer is found who is familiar with these procedures to ensure that they are followed correctly. However, an attorney is not required, and petitioners may proceed pro se.

How is a guardian or conservator appointed?

Any person may file a petition for the appointment of a guardian or conservator for an individual. A petition for appointment of a guardian or conservator is a legal form requesting that the district court appoint an adult to act as guardian or conservator for an individual when less restrictive means are not sufficient to meet the individual’s needs.

A person may petition to have themselves appointed as guardian or conservator, or to appoint another family member, friend, or a professional guardian or conservator, either an agency or an individual. In Minnesota, two or more people may be co-guardians or co-conservators of an incapacitated individual. Guardians or conservators are also permitted to live outside of Minnesota, if they are able to carry out their powers and duties effectively.

What is required in the filing process?

To file for guardianship or conservatorship, the petitioner must complete the correct forms and file them in the right county and in the right order. Generally, petitions should be filed in the county where the respondent lives. Filing the incorrect forms or filing forms incorrectly may significantly delay the process or in some cases stop it altogether. Court administration can answer questions regarding proper filing procedures but cannot, and will not, answer questions requiring legal advice.

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Step 1: Get the Forms

The forms necessary to start a guardianship or conservatorship are located on the [Minnesota Judicial Branch website](http://mncourts.gov/GetForms.aspx?c=21) (mncourts.gov/GetForms.aspx?c=21).

The packet of forms you will need for the process includes the following:

- Petition;
- Oath & acceptance;
- Consent to maltreatment and state licensing agency checks and criminal history check;
- Notice of hearing;
- Proposed order;
- Affidavits of service; and
- Proposed letters.

Step 2: Fill Out the Forms

The petitioner must answer and fill out all the questions on the forms according to the specifics of the respondent's circumstances. Instructions are available as a guide. If you are not sure how to fill out a form, you should [get legal advice](http://mncourts.gov/Help-Topics/Find-a-Lawyer.aspx) (mncourts.gov/Help-Topics/Find-a-Lawyer.aspx).

Step 3: File the Forms

Once completed, the petitioner should file all forms according to the instructions. They should be filed with court administration in the county where the Respondent lives. Once all the required documents are filed, a hearing will be scheduled.

What are the costs of filing?

You can learn about the [filing fees](http://mncourts.gov/Help-Topics/Court-Fees.aspx) on the Minnesota Judicial Branch website (mncourts.gov/Help-Topics/Court-Fees.aspx). The filing fee will be paid from the respondent's funds.



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If the respondent cannot afford to pay the court filing fee, the petitioner may file a [Petition and Affidavit to Request a Fee Waiver \(FEE401\)](#) on behalf of the respondent, based on the respondent's financial situation (mncourts.gov/GetForms.aspx?c=21&p=71). This allows people who have very low income to have the court costs waived.

The petition for guardianship, and the affidavit and petition for a fee waiver, must be filed at the same time. A judicial officer will review the petition and affidavit and, if approved, will file an order waiving the court filing fee. Generally, a fee waiver order is good for the duration of the guardianship case, or until a judicial officer issues a different order.

Step 4: Serve the Respondent and Interested Persons

Ask court administration if a "Court Visitor" will be appointed to meet with the respondent.

- *If a Court Visitor is appointed*, then the Court Visitor will serve the respondent with the papers.
- *If no Court Visitor is appointed*, then you (the petitioner) will be responsible for arranging personal service of the *Notice of Hearing and Notice of Rights* and the *Petition for Appointment of Guardian and/or Conservator* on the Respondent at least 14 days before the hearing.

NOTE: papers cannot be served on a legal holiday as defined in [Minn. Stat. § 645.44, subd. 5](#) (revisor.mn.gov/statutes/cite/645.44). You cannot be the one to personally serve the Respondent.

The person who hand-delivers the papers will need to fill out the *Affidavit of Service* (GAC 2-U).

Notice of the time and place of the hearing is given to the respondent and other interested persons listed in the petition.

- The respondent must be personally served (at least 14 days before the hearing).
- The interested persons can be personally served OR served by mail.
 - If interested persons are served by mail, the envelope must be postmarked at least 14 days before the hearing date.
 - If interested persons other than the respondent are personally served, they must receive the documents at least 14 days before the hearing.

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What is a Court Visitor?

The court may appoint a person who is known as a “court visitor,” who will be an officer of the court and be neutral. The court visitor, if one is appointed, will meet with the respondent at least 14 days before the hearing and:

- Assess the respondent’s health and personal wellbeing;
- Serve and review with the respondent the Petition and Notice of Hearing and Notice of Rights;
- Explain to the respondent their right to object to the petition; and
- Submit a report to the court before the hearing. This report will include a recommendation as to whether guardianship or conservatorship seems necessary. If guardianship or conservatorship is recommended, then the report will also recommend which specific powers the court visitor believes should be granted.

The *Notice of Hearing and Notice of Rights*, along with the *Petition*, must be given to the respondent at least 14 days before the hearing. If the respondent does not receive personal service of the notice at least 14 days before the hearing, the proceedings are invalid.

Step 5: Serve Administrator and Commissioner of Human Services (if necessary)

If the respondent lives in a residential facility, which includes group homes, nursing homes, and state institutions, the petitioner must also mail the notice to the administrator of the facility. It is also necessary to send notice to the program administrator if the respondent lives in a waived service residence or is in foster care. If the respondent is currently under a public guardianship or conservatorship, it is necessary to send notice to the Commissioner of Human Services.

Step 6: File Affidavit of Service

The court will require an *Affidavit of Service* to verify that copies of the documents were personally served on the respondent, and either personally served or mailed to all persons of interest listed in the *Petition*. Documents to be served are the petition, notice of hearing, and notice of rights.

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Preparing for the Hearing

The hearing itself is the same for both conservatorship and guardianship and may be very simple unless it is contested by someone. The petition may be contested by any interested person who thinks there is no need for the appointment of a guardian or conservator, or that the proposed guardian or conservator will not be able to act in the best interest of the respondent. The respondent may also contest the petition.

Who must contact witnesses and gather evidence?

The petitioner must make sure that all witnesses are ready to testify, and that all other documentation is filed with the court. The [Minnesota Rules of Evidence](#) apply to these hearings (revisor.mn.gov/court_rules/rule/ev-toh/).

How is evidence collected for the hearing?

Before the hearing, the petitioner should collect certain documents (“evidence”) that will support the need for a guardian or conservator. Some documents might be considered confidential, such as medical records if being submitted to support the petition. Court rules specify how to submit the confidential documents to the court. See [Minn. Gen. R. Prac. 11](#) (revisor.mn.gov/court_rules/gp-id/11/). This evidence could include specific examples of respondent’s past behaviors which will show the incapacities, including: the latest psychological report, any medical reports, current service or care plans, and any other current assessments. The petitioner is responsible for getting all relevant evidence and bringing to the hearing. It is also helpful to bring someone along who can support the petitioner’s statements, such as a social worker.

Should the respondent attend the hearing?

The respondent must be present at the hearing, unless excused by the court. It is strongly encouraged that the respondent attend the hearing even if there will be little or no comprehension of the proceedings, or even if they have waived their right to attend. This will allow the court to observe their responses to questions.

There may be situations where medical conditions prohibit attendance at the hearing. In these cases, the petitioner will need to have a physician fill out the bottom portion of the Physician’s Statement in Support of Guardianship/Conservatorship (and Inability of Person Subject to Guardianship/Conservatorship to Attend Hearing) (GAC 7-U). If filing by paper, the petitioner must use Cover Sheet for Non-Public Documents Form 11.2 when filing the physician’s statement (see Minn. Gen. R. Prac. 11 for how to file confidential documents). These forms are available on the [Minnesota Judicial Branch website](#) (mncourts.gov/GetForms.aspx?c=21).

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Does the court appoint an attorney for the respondent?

Yes. A respondent has the right to be represented by legal counsel in every new proceeding. The court will appoint an attorney for the respondent, unless the respondent chooses to hire their own attorney or signs a waiver of counsel. The petitioner may contact the respondent's attorney to address any differences and discuss questions related to less restrictive means or limitations in powers. Appointment of an attorney does not necessarily mean that the proceedings will be contested but ensures that the respondent's interests are being protected.

The Hearing

The court will review the petition that has been filed, and will take testimony from the petitioner, the court visitor (if one has been appointed), the respondent, and any interested persons or objectors.

Once all the evidence has been heard, there are several potential outcomes:

- The court may grant conservatorship or guardianship, as requested, and the court then enters an Order stating that fact.
- The court may decide that the individual needs less assistance than was requested and may modify the petition to a less restrictive form. For example, the court may grant less powers than were requested.
- The court may determine that the individual does not need a conservator or guardian and dismiss the petition.

What is a bond, and when is it necessary?

A **bond** is a promise by a bonding company that protects the assets of a person subject to conservatorship from mismanagement by the conservator. In the event of mismanagement, the court may decide that the bonding company will reimburse the estate for the missing money, and that company can recoup the money from the conservator.

The court requires the conservator to post a bond where the value of the personal property of the estate in the initial inventory filed by the conservator is expected to be at least \$10,000. See [Minn. Stat. § 524.5-416\(a\)\(5\)](http://revisor.mn.gov/statutes/cite/524.5-416) (revisor.mn.gov/statutes/cite/524.5-416).



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If a conservator was appointed, the court may require a bond which is equal to the value of the estate and set by the court. Each year, the conservator must continue to pay the bond premium. Petitioners can get a bond from any bonding company. No bond is required for a guardianship only.

After the Hearing

Often after the hearing, the petitioner must prepare and file additional forms with the court.



NOTE: Some districts may require the petitioner to file these forms with the guardianship or conservatorship petition. Check with court administration in the county where the respondent lives to see what that court's requirements are.

Order Appointing General Guardian or Conservator

Once the hearing is finished, the court will issue an Order Appointing General Guardian or Conservator. Check with court administration to see if the petitioner should submit a proposed order to the court.

Notice of Entry of Order and Right to Appeal

The court will complete a Notice of Entry of Order and Right to Appeal form. Copies of these two forms must then be sent to the person subject to guardianship or conservatorship and to their attorney. Some courts will do this, and other courts require the petitioner to do this mailing. If so, another Affidavit of Service must be filled out and filed with the court to show that this was done (see below).

Although the person subject to guardianship or conservatorship has 60 days to appeal the order, the guardianship or conservatorship is effective as soon as the proposed guardian or conservator has **qualified** and the court issues **letters**. If the person subject to guardianship or conservatorship appeals the court order within 60 days, the guardian or conservator's powers and duties may be suspended during the appeal process.

Acceptance of Appointment by Corporation/Individual

If not previously filed, the appointed guardian or conservator will need to fill out an ["Acceptance of Appointment" form \(GAC 1-U\)](#) (mncourts.gov/GetForms.aspx?c=21&f=410), sign it under penalty of perjury, and file it with the court administration. This **qualifies** the newly

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appointed guardian or conservator to act as guardian or conservator. The form asks the guardian or conservator to swear that they will faithfully perform their duties.

Letters of General Guardianship or Conservatorship

Check with court administration to see if the petitioner needs to file the [“Letters of Guardianship or Conservatorship” form \(GAC 4-U\)](#) (mncourts.gov/GetForms.aspx?c=21#subcat49). Once the court issues the Letters, the appointed guardian or conservator must specifically request and pay for a certified copy of the signed form from the court administrator’s office, or they will not receive one. The letters are the guardian or conservator’s proof of authority to act on behalf of the person subject to guardianship or conservatorship. It may be necessary that the guardian or conservator purchase extra certified copies of the letters.

Inventory

If a conservator is appointed, they must use MyMNConservator (MMC) to complete and file with the court an Inventory within 60 days of being appointed.

Modifications and Termination of Guardianship or Conservatorship

What is a modification of a guardianship or conservatorship?

If an individual no longer needs the complete supervision and protection of a guardian or conservator, but still needs some assistance with decision-making, it is possible to modify a guardianship to a conservatorship, or to modify the powers a guardian or conservator holds to allow the person subject to guardianship or conservatorship to make more decisions.

The process for modification of the powers of a guardian or conservator is similar to the process for establishing a conservatorship or guardianship. A *Petition to Modify Powers* is filed with the court. The court sets a hearing date and sends a notice of hearing to attorneys, court visitor (if any), and to the petitioner. The petitioner gives copies of the notice of the hearing to all interested persons. Evidence is given at the hearing showing that the individual has functional capacity in specific areas and that the right to make decisions in those areas should be restored to the individual. The court will make an appropriate order.

It is also possible that a guardian/conservator may need to get more powers from the court than when the guardianship or conservatorship was originally established. This is also handled through the modification procedure described above.

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When does a guardianship or conservatorship terminate (end)?

A guardianship or conservatorship terminates upon the death of the person subject to guardianship or conservatorship, or upon court order restoring the capacity of the person subject to guardianship or conservatorship, or upon expiration of the time period set out in statute. See Minn. Stat. §§ [524.5-310](#) and [524.5-431](#) (revisor.mn.gov/statutes/cite/524.5-310 and revisor.mn.gov/statutes/cite/524.5-431).

Restoration to Capacity

Anyone who is under guardianship or conservatorship but feels that guardianship or conservatorship is no longer necessary, or any interested person who believes that an individual no longer needs to be under guardianship or conservatorship, may file a petition in court to terminate or modify the guardianship or conservatorship and have the individual **restored to capacity**. This means that all of the rights which had been removed from the individual under the court order appointing a guardian or conservator are given back to the individual and the individual is no longer considered to be incapacitated.

The process for restoring an individual to capacity is similar to the process for establishing a guardianship or conservatorship. A Petition for Termination of Guardianship or Conservatorship and to Discharge Guardian or Conservator is filed with the court. The court sets a hearing date and sends a notice of hearing to attorneys, the court visitor (if any), and to the petitioner. The petitioner gives copies of the notice of the hearing to all interested persons. Evidence is given at the hearing showing that the individual now has the functional ability to handle their personal care or manage property.

Death of the Person Subject to Guardianship or Conservatorship

When a person subject to guardianship or conservatorship dies, the guardian or conservator no longer has authority. However, it does not relieve the **conservator** from the liability of accounting for their actions, nor does it relieve them of the obligation to file a final account with the court of the disposition of the assets of the estate of the person subject to conservatorship. The conservator must file a final accounting in MMC and ask the court to set the account for hearing and discharge.

Successor Guardian or Conservator

If a guardian or conservator dies, resigns or is removed, and the person subject to guardianship or conservatorship is still in need of a guardian or conservator, the court must appoint a successor guardian or conservator. This is true even if another family member is listed as the preferred guardian or conservator in a living will.



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The process for appointing a successor guardian or conservator is the same as for establishing the initial guardianship or conservatorship. A petition to appoint a successor guardian or conservator must be filed with the court. The court may remove a guardian or conservator and appoint a successor if it is in the best interests of the person subject to guardianship or conservatorship.

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Chapter 10 GUARDIAN AND CONSERVATOR, ATTORNEY, AND COURT FEES

Court Fees

Filing Fees

A filing fee is required at the time of initial filing of the Petition to establish a guardianship or conservatorship. Check with the County that you are filing the petition in for their current fee schedule. You can also look on the [Minnesota Judicial Branch website](http://mncourts.gov/Help-Topics/Court-Fees/District-Court-Fees.aspx) (mncourts.gov/Help-Topics/Court-Fees/District-Court-Fees.aspx).

If the respondent or person subject to guardianship cannot afford the filing fee, the petitioner or guardian may ask for a fee waiver (in forma pauperis, IFP, status) by filing the [Affidavit to Request Fee Waiver \(Guardianship/Conservatorship\) \(FEE401\)](http://mncourts.gov/GetForms.aspx?c=19) (mncourts.gov/GetForms.aspx?c=19).

Copies of Documents

[MN Court Records Online \(MCRO\)](http://mncourts.gov/Access-Case-Records/MCRO.aspx) (mncourts.gov/Access-Case-Records/MCRO.aspx) is an application that provides online access to many public Minnesota district (trial) court records and documents. Access to documents filed before July 1, 2015, is very limited in MCRO.

You can also request copies of documents filed with the court from court administration. For more information, visit the [Copy Requests Help Topic](http://mncourts.gov/Help-Topics/Copy-Requests.aspx) on the Minnesota Judicial Branch website (mncourts.gov/Help-Topics/Copy-Requests.aspx).

How to Pay Guardian or Conservator Fees and Attorney Fees

According to [Minn. Stat. § 524.5-502](http://revisor.mn.gov/statutes/cite/524.5-502) (revisor.mn.gov/statutes/cite/524.5-502), the court may order payment of reasonable fees to be paid from the estate of the person subjected to guardianship or conservatorship, or from the county having jurisdiction over the proceedings if the person subject to guardianship or conservatorship is indigent, to the guardian or conservator when they have rendered necessary services or have incurred necessary expenses for the benefit of the person subject to guardianship or conservatorship.

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A guardian or conservator may petition the court for reimbursement or reasonable compensation when they were nominated by the court or by the county adult protection unit because no suitable relative or other person was available to provide guardianship or conservatorship services necessary to prevent abuse or neglect of a vulnerable adult as defined in the Vulnerable Adult Act.

In order to receive an award of fees by the court under this statute, it is necessary to prove, and the court must make, the following findings:

- The person is legally appointed the guardian or conservator, or both;
- The services rendered or expenses incurred are **necessary**;
- The services rendered or expenses incurred are for the **benefit** of the person subject to guardianship or conservatorship; and
- Reimbursement of expenses must be actual amounts incurred; compensation for services rendered (fees) must be **reasonable**.



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APPENDIX A

Resources on Guardianship and Conservatorship

Visit the Help Topics on the Minnesota Judicial Branch website for resources and other information:

- [Guardianship](https://mncourts.gov/Help-Topics/Guardianship.aspx) (mncourts.gov/Help-Topics/Guardianship.aspx); and
- [Conservatorship](https://mncourts.gov/Help-Topics/Conservatorship.aspx) (mncourts.gov/Help-Topics/Conservatorship.aspx).

You may also find helpful information at the [Minnesota State Law Library](https://mncourts.gov/libguides.com/guardianship-conservatorship/generaladults) (mncourts.gov/libguides.com/guardianship-conservatorship/generaladults).

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APPENDIX B

Glossary of Terms

Affidavit

A statement made under penalty of perjury. See [Minn. Stat. § 358.116](http://revisor.mn.gov/statutes/cite/358.116) (revisor.mn.gov/statutes/cite/358.116).

Appeal

To bring a case before a higher court to review a decision of a lower court.

Bill of Rights

To bring a case before a higher court to review a decision of a lower court. The Guardianship and Conservatorship Bill of Rights is found in [Minn. Stat. § 524.5-120](http://revisor.mn.gov/statutes/cite/524.5-120) (revisor.mn.gov/statutes/cite/524.5-120). The Bill of Rights provides extensive protections to ensure a guardian or conservator does not abuse their authority. It says that a person subject to guardianship or conservatorship keeps all rights that have not otherwise been restricted by the court order.

Bond

A promise by a bonding company, that protects the person subject to conservatorship from mismanagement by the conservator. In the event of mismanagement, the court may decide that the bond will reimburse the estate for the missing money, and the company that issued the bond can recover the money from the conservator.

Change of Venue

To move the court matter from one county in Minnesota to another county in Minnesota.

Contested

When any party objects to the petition or to the hearing.

Continuance

When the court has agreed to postpone the hearing date.

Co-Conservator (also, Co-Guardian)

When more than one person is appointed to serve as a decision-maker.



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Conservatorship

A conservatorship exists when a **conservator** is appointed by the court to handle financial matters for another person. The person for whom a conservator handles financial affairs is called a **person subject to conservatorship**. Conservators are appointed to protect the finances of the person subject to conservatorship.

Emergency Guardianship, Emergency Conservatorship

In emergency situations where the process of petitioning for a general guardianship or conservatorship is reasonably expected to cause danger to the respondent's personal safety or financial security, an emergency guardianship or conservatorship may be requested. In this instance, the requirement of providing a minimum of two weeks' notice to the respondent and family members is waived. An emergency guardianship or conservatorship is granted for a specific, usually short, duration.

Estate

A person's income, assets, real estate, or any other financial holdings.

Fee Waiver - In Forma Pauperis (IFP)

Minnesota law states that the court may authorize a case to proceed without payment of court costs for those who qualify based on current federal poverty guidelines. See [Minn. Stat. § 563.01](http://revisor.mn.gov/statutes/cite/563.01) (revisor.mn.gov/statutes/cite/563.01). The court will consider the income and assets of the person subject to guardianship.

Another law states that counties may be responsible for paying guardian, attorney, or health care professional fees to establish or maintain guardianships. See [Minn. Stat. § 524.5-502](http://revisor.mn.gov/statutes/cite/524.5-502) (revisor.mn.gov/statutes/cite/524.5-502).

Guardianship

A guardianship exists when a **guardian** is appointed by the court to handle personal decisions for another person. The person for whom a guardian handles personal affairs is called a **person subject to guardianship**. Guardians are only appointed to protect the personal well-being of the person subject to guardianship.

Hearing

A court proceeding that is conducted before a judicial officer that allows a person or persons to present their case.



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Incapacitated Person

Incapacitated person means an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance.

Indigent

A person with little money or property.

Inventory

A document that describes all assets of the person subject to conservatorship. The Inventory is required to be filed with the court within 60 days of appointment.

Less Restrictive Means

If there are other ways to assist an individual with their care and management of their finances, such as a family member providing the individual with assistance in making personal or financial decisions or appointing a Power of Attorney, these methods are considered “less restrictive means.” Alternatives to the appointment of a guardian or conservator in exercising the care and control of the individual’s person or estate. Before the court appoints a guardian or conservator, these less restrictive means must be explored and ruled out before petitioning for the appointment of a guardian or conservator.

Oath

A sworn promise to perform and act faithfully and truthfully.

Order to Show Cause

An order requiring a party to appear and show why a previous order has not been complied with, or why a proposed order should not be made.

Petition

A legal document requesting action or relief from the court.

Person Subject to Conservatorship

A person for whom a conservator was appointed.

Person Subject to Guardianship

A person for whom a guardian was appointed.



Guardianship and Conservatorship in Minnesota

Referee

A judicial officer who is appointed by a judge. A referee is able to preside over matters as a judicial officer, and recommends decisions or orders, which are signed, or ordered, by a judge.

Respondent

The person for whom appointment of a guardian or conservator is sought.

Supported Decision Making

A person acting, either informally as a family member or friend, or formally, as a proxy, agent, guardian, or conservator, on behalf of an incapacitated person in making relevant decisions regarding personal, medical, or financial issues.

Technological Assistance

Technological assistance that may be used to assist the person subject to guardianship or conservatorship may include, but is not limited to:

- Direct deposit/withdrawal;
- Computer assisted communication;
- Computer controlled wheelchairs;
- Seeing eye dogs; and
- Any other form of applied technology that can assist the person subject to guardianship or conservatorship retain their independence.

Testimony

Oral statements made under oath at a legal proceeding.

Witness

- 1 . A person called to testify in a legal proceeding.
- 2 . A person who witnesses the signing of a legal document.