

State of Minnesota

District Court

County of: _____

Judicial District: _____
Court File Number: _____
Case Type: _____ Guardianship/Conservatorship

In Re: **Guardianship**
 Conservatorship
 of:

Order Appointing:
 Successor Guardian
 Successor Conservator

This matter came on for hearing before the district court on _____ on a petition seeking appointment of successor Guardian Conservator for the person subject to guardianship/conservatorship named above. Petitioner appeared personally with the Petitioner’s attorney, _____. The person subject to guardianship/conservatorship appeared personally with their attorney, _____. The matter, having been considered by the Court, and the Court being duly advised in the premises now makes the following:

FINDINGS OF FACT

1) **FINDING OF INCAPACITY:**

 Guardianship: (i) The person subject to guardianship/conservatorship is incapacitated because the person is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions concerning their personal needs for medical care, nutrition, clothing, shelter or safety. The person’s inability is reflected by the following facts:

and (ii) the person subject to guardianship/conservatorship has demonstrated behavioral deficits evidencing inability to meet their needs for medical care, nutrition, safety and shelter. The person’s inability is reflected by the following facts:

Conservatorship: (i) The person subject to guardianship/conservatorship 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. The person's inability is reflected by the following facts:

and (ii) the person subject to guardianship/conservatorship has property which will be dissipated without proper management and funds are needed for the support, care, education, health, and welfare of the person or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money. This conclusion is supported by the following facts:

2) No appropriate alternative to guardianship exists that is less restrictive of the civil rights and liberties of the person subject to guardianship/conservatorship including, but not limited to, the use of appropriate technological assistance, supported decision making, community or residential services, or appointment of a health care agent under Minn. Stat. § 145C.01, subd. 2. The person's identified needs cannot be met by less restrictive means is reflected by the following facts:

No appropriate alternative to conservatorship exists that is less restrictive of the civil rights and liberties of the person subject to guardianship/conservatorship including, but not limited to, the use of appropriate technological assistance, supported decision making, the use of a representative payee, trusts, banking or bill-paying assistance, appointment of an attorney-in-fact under Minn. Stat. § 523.01, or a protective arrangement under Minn. Stat. § 524.5-412. The person's identified needs cannot be met by less restrictive means is reflected by the following facts:

3) The person subject to guardianship/conservatorship is incapable of exercising the following rights and powers:

- All of the rights and powers under Minn. Stat. § 524.5-313(c) for a person subject to guardianship.
- All of the rights and powers under Minn. Stat. § 524.5-417(c) for a person subject to conservatorship.

A limited guardianship or conservatorship is not appropriate because _____

(If the Respondent is capable of performing some but not all powers and duties, specify which powers and duties CANNOT be performed by the Respondent.)

- To establish the place of abode within or without the State;
- To provide for the person's care, comfort and maintenance needs;
- To take reasonable care of the person's clothing, furniture, vehicles and other personal effects;
- To give any necessary consent to enable, or to withhold consent for, the necessary medical or other professional care, counsel, treatment or service;
- Exercise supervisory authority over the person;
- To pay reasonable charges for the support, maintenance, and education of the person in a manner suitable to the person's station in life and the value of person's estate;
- To pay out of the person's estate all just and lawful debts of the person;
- To possess and manage the estate of the person, collect all debts and claims in favor of the person, or to compromise them, institute suit on behalf of the person, or invest the person's assets not currently needed for debts, charges, and management of the estate;
- Exchange or sell an undivided interest in real property;
- To approve or withhold approval of any contract, except for necessities, which the person may make or wish to make; and
- To apply on behalf of the person for any assistance, services, or benefits available to the person through any unit of government;
- To establish an Achieving a Better Life Experience Act of 2014 account under section 529A of the Internal Revenue Code (known as an ABLÉ account);

- To commence legal proceedings on behalf of and represent the person subject to guardianship in all civil proceedings (**only given if no conservator is appointed**);
- (other) _____
_____.

4) The person subject to guardianship/conservatorship is (not) a patient of a State Hospital for persons with mental illness or a person with developmental disabilities or dependent or neglected ward of the Commissioner of Human Services, or under the temporary custody of the Commissioner of Human Services.

5) Expiration of Guardianship, or discharge of the prior Guardian and/or Conservator:

a. Guardian.

A Guardian appointed by Court order dated _____ was for a limited duration of _____ months years, and expires on _____.

OR

A Guardian appointed by Court order dated _____ was discharged on _____.

OR

_____, Guardian, needs to be discharged and is no longer able or willing to serve as Guardian because: _____

b. Conservator.

A Conservator was appointed by Court order dated _____ was discharged on _____.

OR

_____, Conservator, needs to be discharged and is no longer able or willing to serve as Conservator because: _____

6) The person subject to guardianship/conservatorship is or is not under 30 years old.

7) The person subject to guardianship/conservatorship is in need of a:

- Successor Guardian;
- Successor Conservator.

8) Right to Vote.

a. The person subject to guardianship/conservatorship appears to understand the nature and effect of voting and maintains the right to vote.

- b. The person subject to guardianship/conservatorship does not appear to understand the nature and effect of voting and the person's right to vote is revoked. The basis for this is as follows: _____

- 9) The Court finds that the:
- a. Successor Guardian is the most suitable and best qualified among those available and willing to discharge the trust and is not excluded from appointment pursuant to Minn. Stat. § 524.5-309(c) or such Successor Guardian has been approved by prior Order of a court pursuant to Minn. Stat. § 524.5-302(d);
- b. Successor Conservator is the most suitable and best qualified among those available and willing to discharge the trust and is not excluded from appointment pursuant to Minn. Stat. § 524.5-413(d).

CONCLUSIONS OF LAW

- 1) The person subject to guardianship/conservatorship is an incapacitated person whose needs cannot be met by less restrictive means.
- 2) The following should be appointed:
 A Guardian of _____;
 A Conservator of _____.

ORDER

NOW, THEREFORE, IT IS ORDERED:

- 1) That: _____, Guardian, was appointed for a limited duration, and the guardianship will terminate without further order of the court.
 _____, Guardian, is/has been discharged.
 _____, Conservator, is/has been discharged.
- 2) That: _____ is appointed Successor Guardian of _____.
 _____ is appointed Successor Conservator of _____.
- 3) That Letters of Successor Guardianship shall issue to _____ upon the filing of the *Acceptance of Appointment*, and these Letters shall reflect that the Successor Guardian is appointed by the Court.
 Letters of Successor Conservatorship shall issue to _____ upon the filing of the *Acceptance of Appointment* and bond, if any.

4) Appointment of powers and duties:

The Successor Guardian shall have the power and duty to:

Exercise all of the rights and powers on behalf of the person subject to guardianship under Minn. Stat. § 524.5-313(c) paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and 10. A limited guardianship is not appropriate because _____

(If the Successor Guardian is granted limited powers and duties, specify which powers and duties are vested in the Successor Guardian by this Order.)

Have custody of the person subject to guardianship and establish the place of abode for the person subject to guardianship within or without the State, Minn. Stat. § 524.5-313(c)(1);

Provide for the care, comfort and maintenance needs of the person subject to guardianship, Minn. Stat. § 524.5-313(c)(2);

Take reasonable care of the clothing, furniture, vehicles and other personal effects of the person subject to guardianship, Minn. Stat. § 524.5-313(c)(3);

Give any necessary consent to enable, or to withhold consent for, the person subject to guardianship to receive necessary medical or other professional care, counsel, treatment or service, Minn. Stat. § 524.5-313(c)(4);

Approve or withhold approval of any contract, except for necessities, which the person subject to guardianship may make or wish to make (***only given if no conservator is appointed***), Minn. Stat. § 524.5-313(c)(5);

Exercise supervision authority over the person subject to guardianship, but may not restrict the ability of the person subject to guardianship to 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 good cause is shown by the guardian that the restriction is necessary due to 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, Minn. Stat. § 524.5-313(c)(6);

Apply on behalf of the person subject to guardianship for any assistance, services, or benefits available to the person subject to guardianship through any unit of government, Minn. Stat. § 524.5-313(c)(7);

Establish an Achieving a Better Life Experience Act of 2014 account under section 529A of the Internal Revenue Code (known as an ABL account) for the person subject to guardianship, Minn. Stat. § 524.5-313(c)(9);

Commence legal proceedings on behalf of and represent the person subject to guardianship in all civil court proceedings (***only given if no conservator is appointed***), Minn. Stat. § 524.5-313(c)(10);

(other) _____
_____.

and to exercise all other powers, duties and responsibilities conferred on the Guardian under applicable law.

The Successor Conservator shall have the power and duty to:

Exercise all of the rights and powers under Minn. Stat. § 524.5-417(c) paragraphs 1, 2, 3, 4, 5, 6 and 7. A limited conservatorship is not appropriate because _____

(If the Successor Conservator is granted limited powers and duties, specify which powers and duties are vested in the Successor Conservator by this Order.)

- Pay reasonable charges for the support, maintenance, and education of the person subject to conservatorship in a manner suitable to their station in life and the value of their estate, Minn. Stat. § 524.5-417(c)(1);
- Pay out of the estate of the person subject to conservatorship all lawful debts of the person subject to conservatorship, Minn. Stat. § 524.5-417(c)(2);
- Possess and manage the estate of the person subject to conservator, collect all debts and claims in favor of the person subject to conservatorship, or with the approval of the court compromise them, institute suit on behalf of and represent the person subject to conservatorship in all civil court proceedings, and invest all funds not currently needed for debts, charges and management of the estate in accordance with the provisions of sections 48A.07, subd. 6, 501C.0901, and 524.5-423, or as otherwise as ordered by the court, Minn. Stat. § 524.5-417(c)(3);
- Exchange or sell an undivided interest in real property, Minn. Stat. § 524.5-417(c)(4);
- Approve or withhold approval of any contract, except for necessities, which the person subject to conservatorship may make or wish to make, Minn. Stat. § 524.5-417(c)(5);
- Apply on behalf of the person subject to conservatorship for any assistance, services, or benefits available to the person subject to conservatorship through any unit of government, Minn. Stat. § 524.5-417(c)(6);
- Establish and exercise all powers over an Achieving a Better Life Experience Act of 2014 account under section 529A of the Internal Revenue Code (known as an

ABLE account) for the person subject to conservatorship, Minn. Stat. § 524.5-417(c)(7);

(other) _____
_____;

and to exercise all other powers, duties and responsibilities conferred on the Conservator under applicable law.

5) Duration of the guardianship and/or conservatorship:

The duration of the guardianship is

Unlimited;

OR

Limited to a term of _____ months years. Minn. Stat. § 524.5-310(d).

The duration of the conservatorship is

Unlimited;

OR

Limited to a term of _____ months years. Minn. Stat. § 524.5-409(1)(a).

6) The conservator shall file a bond in the amount of \$_____.

7) Any wages and salary earned by the person subject to conservatorship through employment shall shall not be a part of the conservatorship estate. Minn. Stat. § 524.5-417(g).

8) The court-appointed attorney for the person subject to guardianship or conservatorship is discharged upon the expiration of the time to appeal this Order.

9) That the person subject to guardianship's right to vote is retained revoked until further order of the court.

10) Responsibilities of Successor Guardian and/or Successor Conservator:

A. Within 14 days of this Order, the Successor Guardian and/or Successor Conservator must provide the person subject to guardianship/conservatorship, and the person's counsel, a copy of the order of appointment and a notice advising the person subject to guardianship/conservatorship of the right to appeal the order.

B. Within 60 days of the date the Letters of Successor Conservatorship are issued, the Successor Conservator must file with the court, and serve on the person subject to conservatorship and all interested persons, a detailed inventory of the estate subject to conservatorship.

C. The Successor Guardian and/or Successor Conservator must notify the court of any changes under Minn. Stat. §§ 524.5-316(b) and 524.5-420(d) within 30 days of the change.

D. Within 1 day of awareness of the death of the person subject to guardianship/conservatorship, the Successor Guardian must notify the Court and all interested persons of the death. If there is no acting guardian, and the Successor Conservator becomes aware of the death, the Successor Conservator must notify the court and all interested persons as soon as is reasonably practical.

E. Every year, the Successor Guardian must file with the court, and serve on all interested persons within 30 days of the anniversary date the Letters of Successor Guardianship were issued:

1. A Personal Well-Being Report;
2. Annual Notice of Rights; and
3. Bill of Rights.

The Successor Guardian may use MyMNGuardian (MMG).

F. Every year, the Successor Conservator must file with the court, and serve on all interested persons within 30 days of the anniversary date the Letters of Successor Conservatorship were issued:

1. Annual Account;
2. Annual Notice of Rights; and
3. Bill of Rights.

The Successor Conservator must use MyMNConservator (MMC).

G. The Successor Guardian must give notice before any sale or disposition of the clothing, furniture, vehicles, or other personal effects of the person subject to guardianship pursuant to Minn. Stat. § 524.5-313(c)(3).

H. Every 5 years, the Successor Guardian and/or Successor Conservator and all individuals under their employment who are responsible for exercising powers and duties under the Successor Guardianship/Conservatorship, must complete the background study consent form or file an affidavit of prior background study with a copy of a current background study.

Order Recommended by:

By the Court:

Referee of District Court Date

Judge of the District Court Date