

Less Restrictive Alternatives Available Prior to Conservatorship

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Background

The Minnesota Judicial Branch is working hard to ensure that conservatorships are not established unless they are absolutely needed by an individual.

The appointment of a conservator is a serious matter involving the limitation of the individual's independence and rights, and it should be considered only as a last resort.

Before seeking a conservatorship, [Minnesota Statute § 524.5-409](#) requires that less restrictive alternatives are seriously considered and meaningfully tried, as appropriate. Less restrictive alternatives to conservatorship may include:

- A Power of Attorney,
- Supported Decision Making,
- Appropriate Technological Assistance;
- Obtaining Representative Payee appointment to manage social security benefits, and/or
- Creating a trust.

If a person has one or more of these in place to support them, a conservatorship may not be necessary.

Power of Attorney

A power of attorney (POA) is a legal document that allows someone else to act on an individual's behalf. Using a written POA, a person with capacity ("principal") can appoint someone as their agent (often called an attorney-in-fact) to assist in managing their financial affairs.

According to [Minn. Stat. § 523.04](#), a written power of attorney that is dated and purports to be signed by the principal named in it is presumed to be valid. All parties may rely on this presumption except those who have actual knowledge that the power was not validly executed. [Minn. Stat. § 523.20](#) provides that any party refusing to accept the authority of an attorney-in-fact is liable in the same manner as the party would be liable had the party refused to accept the authority of the principal unless the party had actual knowledge of the POA's revocation, the POA has expired, or the party has actual knowledge of the death of the principal or actual notice of a judicial determination that the principal is legally incompetent. According to [Minn. Stat. § 523.18](#), the signature of the attorney-in-fact is conclusive proof as to any party relying on the attestation that the POA has not been terminated or revoked at the time of signature except as to a party with actual knowledge otherwise.

Supported Decision Making

Supported Decision Making is a recognized lesser restrictive means to conservatorship that is appropriate in cases where a person that may otherwise need to be subject to a conservatorship is able to maintain their independence without a need for the conservatorship with the assistance of Supported Decision Making.

Supported Decision Making allows trusted friends, family members, or professionals to make decisions with the person rather than for them. It helps them understand the situations and choices they face, consistent with the individual's wishes, so they may make their own decisions without the need for a conservatorship.

Supported Decision Making may be guided by a formal, written document—called a Supported Decision Making Agreement – or it may be informal, simple conversations with the person to help them make decisions.

Supported Decision Making simply means you support the person in ensuring their needs are met—making decisions with the person, not for the person, to ensure they are safe, happy, and living their best life. It's about being creative in helping people achieve their wants (goals, desires, wishes, hopes) while ensuring their needs are met.

Ultimately, it's about finding balance: being as safe as necessary, not as safe as possible.

Appropriate Technological Assistance

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

- Direct deposit/withdrawal
- Computer assisted communication
- Computer controlled wheelchairs
- Assistance animals such as seeing eye dogs
- Any other form of applied technology that can assist the person retain their independence.

Representative Payee

The Social Security Administration can appoint a representative payee under its [Representative Payee Program](#) to receive and manage the social security benefits for a person who can't manage or direct the management of their benefits on their own.

A payee can be a person or an organization. The payee's main duties are to use and save the social security benefits to pay for the current and future needs of the person receiving the benefits.

A payee has to apply to be a representative payee and the Social Security Administrative gathers evidence to decide if it needs to appoint a payee. Federal law requires most minor children and all legally incompetent adults to have payees.

Creating a Trust

A Trust is a legal entity like a corporation created by a Trust Agreement. A person with the capacity to create a Trust can put their assets into a Trust to be managed by a Trustee for the benefit of a beneficiary or beneficiaries, which can include themselves. The Trustee can be an individual or an organization.

The Trustee will have the authority to manage assets of the trust as set forth in the Trust agreement. The Trustee can typically use trust assets to pay expenses of the beneficiary, including expenses such as debts, utility bills, insurance payments, real estate fees, taxes, and attorney's fees.

There are different types of Trusts that are appropriate for different circumstances. Trusts can be revocable or irrevocable. A Special Needs Trust is a trust established for a person under age 65 who is disabled any meets certain criteria.

If you are interested in using a Trust as a less restrictive alternative, you should consult with an attorney to receive advise whether a Trust is advisable for you and, if so, to help you create one.

Resources

- [Guardianship and Conservatorship Manual](#)
- [Representative Payee Program](#)
- [Supported Decision Making - WINGS MN \(SDMA Sample Template\)](#)
- [MN Attorney General - Probate and Planning - Living Trusts](#)
- [MN Association for Guardianship & Conservatorship \(MAGiC\) - Alternatives](#)
- [Minn. Stat. Chap. 523 - Powers of Attorney](#)
- [Minn. Stat. Chap. 524, Article 5 - Protection of Persons Under Disability & Their Property](#)
- [Minn. Stat. Chap. 501C – Trusts](#)

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