

Guardianships & Conservatorships



GUARDIANSHIPS & CONSERVATORSHIPS

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GUARDIANSHIPS & CONSERVATORSHIPS

INTRODUCTION

The purpose of this pamphlet is to explain some of the duties and responsibilities of being a conservator or guardian. This pamphlet is not intended to advise participants on legal issues nor is it intended to be a substitute for a lawyer or legal advice. It is rather a general description of procedures and basic information about guardianship and conservatorship matters in Ramsey County Probate Court. A more detailed [guardianship/conservatorship manual](#) is available on the court's website.

DEFINITIONS & POWERS

Guardianships or conservatorships are designed for those people in need of protection in personal or financial matters.

A **conservator** or **guardian** is someone appointed by the Probate Court to handle the affairs of an incapacitated person. Before an appointment is made, the person for whom a guardianship or conservatorship is sought is called a **respondent**. After an appointment is made, the person is called a **protected person** (in a conservatorship) or a **ward** (in a guardianship).

A **Guardian** takes care of a ward's personal affairs (medical care, nutrition, clothing shelter, residence, and safety).

A **Conservator** manages a protected person's financial affairs (finances, property and real estate).

An incapacitated person may have both a **conservator** and a **guardian**. The **conservator** and the **guardian** may be the same person.

There are voluntary conservatorships and guardianships. If a person is competent and would like to choose someone to handle personal or financial matters, a request may be made to the Court for such appointment.

Guardians and Conservators are subject to the control and direction of the court at all times and in all things.

The powers that can be granted to a guardian are found in [Minnesota Statutes § 524.5-313](#). The powers that can be granted to a conservator are found in [Minnesota Statutes § 524.5-417](#).

GUARDIAN'S POWERS AND DUTIES - [MINNESOTA STATUTES § 524.5-313](#)

Powers over the Person

- (a) A guardian shall be subject to the control and direction of the court at all times and in all things.
- (b) The court shall grant to a guardian only those powers necessary to provide for the demonstrated needs of the ward.
- (c) The court may appoint a guardian if it determines that all the powers and duties listed in this section are needed to provide for the needs of the incapacitated person. The court may also appoint a guardian if it determines that a guardian is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a guardian or those which the court may grant to a guardian include, but are not limited to:
 - (1) The power to have custody of the ward and the power to establish a place of abode within or outside the state, except as otherwise provided in this clause. The ward or any person may petition the court to prevent or to initiate a change in abode. A ward may not be admitted to a regional treatment center by the guardian except (i) after a hearing pursuant to chapter 253B; (ii) for outpatient services; or (iii) for the purpose of receiving temporary care for a specific period of time not to exceed 90 days in any calendar year.
 - (2) The duty to provide for the ward's care, comfort and 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 personal funds. Whenever possible and appropriate, the guardian should meet these requirements through governmental benefits or services to which the ward is entitled, rather than from the ward's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian, but the guardian shall have no personal or monetary liability.
 - (3) The duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a conservator of the estate. The guardian must give notice by mail to interested persons prior to the disposition of the ward's clothing, furniture, vehicles, or other personal effects. The notice must inform the person of the right to object to the disposition of the property within ten days of the date of mailing and to petition the court for a review of the guardian's proposed actions. Notice of the objection must be served by mail or personal service on the guardian and the ward unless the ward is the objector. The guardian served with notice of an objection to the disposition of the property may not dispose of the property unless the court approves

the disposition after a hearing.

- (4) (i) The power to give any necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment or service, except that 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 as provided in this clause. The guardian shall not consent to any medical care for the ward which violates the known conscientious, religious, or moral belief of the ward.

(ii) A guardian who believes a procedure described in item (i) requiring prior court approval to be necessary for the proper care of the ward, shall petition the court for an order and, in the case of a public guardianship under chapter 252A, obtain the written recommendation of the commissioner of human services. The court shall fix the time and place for the hearing and shall give notice to the ward in such manner as specified in section [524.5-308](#) and to interested persons. The court shall appoint an attorney to represent the ward who is not represented by counsel, provided that such appointment shall expire upon the expiration of the appeal time for the order issued by the court under this section or the order dismissing a petition, or upon such other time or event as the court may direct. In every case the court shall determine if the procedure is in the best interest of the ward. In making its determination, the court shall consider a written medical report which specifically considers the medical risks of the procedure, whether alternative, less restrictive methods of treatment could be used to protect the best interest of the ward, and any recommendation of the commissioner of human services for a public ward. The standard of proof is that of clear and convincing evidence.

(iii) In the case of a petition for sterilization of a mentally retarded ward, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's social history and adjustment or the case manager for the ward to examine or evaluate the ward and to provide written reports to the court. The reports shall indicate why sterilization is being proposed, whether sterilization is necessary and is the least intrusive method for alleviating the problem presented, and whether it is in the best interest of the ward. The medical report shall specifically consider the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interest of the ward.

(iv) Any ward whose right to consent to a sterilization has not been restricted under this section or section 252A.101, may be sterilized only if the ward consents in writing or there is a sworn acknowledgment by an interested person of a nonwritten consent by the ward. The consent must certify that the ward has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization.

(v) A guardian or the public guardian's designee who acts within the scope of authority conferred by letters of guardianship under section 252A.101, subdivision 7, and according to the standards established in this chapter or in chapter 252A shall not be civilly or criminally liable for the provision of any necessary medical care, including but not limited to, the administration of psychotropic medication or the implementation of aversive and deprivation procedures to which the guardian or the public guardian's designee has consented.

- (5) In the event there is no duly appointed conservator of the ward's estate, the guardian shall have the power to approve or withhold approval of any contract, except for necessities, which the ward may make or wish to make.
- (6) The duty and power to exercise supervisory authority over the ward in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.
- (7) If there is no acting conservator of the estate for the ward, the guardian has the power to apply on behalf of the ward for any assistance, services, or benefits available to the ward through any unit of government.
- (8) Unless otherwise ordered by the court, the ward retains the right to vote.

CONSERVATOR'S POWERS AND DUTIES - [MINNESOTA STATUTES § 524.5-417](#)

Powers over the Estate

- (a) A conservator shall be subject to the control and direction of the court at all times and in all things.
- (b) The court shall grant to a conservator only those powers necessary to provide for the demonstrated needs of the protected person.
- (c) The court may appoint a conservator if it determines that all the powers and duties listed in this section are needed to provide for the needs of the protected person. The court may also appoint a conservator if it determines that a conservator is necessary to provide for the needs of the protected person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a conservator include, but are not limited to:
 - (1) The duty to pay the reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the conservator shall have no personal or monetary liability;
 - (2) The duty to pay out of the protected person's estate all just and lawful debts of the protected person and the reasonable charges incurred for the support, maintenance, and education of the protected person's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the protected person;
 - (3) The duty to possess and manage the estate, collect all debts and claims in favor of the protected person, or, with the approval of the court, compromise them, institute suit on behalf of the protected person and represent the protected person in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48A.07, subdivision 6, and 501B.151, 524.5-423, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a conservator. A conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

- (4) Where a protected person has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate, subject to the procedures and notice requirements of section [524.5-418](#);

NOTE: Real Estate may not be sold, mortgaged, leased, or encumbered without a court order. Consult with your attorney before entering into ANY agreement regarding real estate.

- (5) The power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make; and
- (6) The power to apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.
- (d) The conservator shall have the power to revoke, suspend, or terminate all or any part of the durable power of attorney of which the protected person is the principal with the same power the principal would have if the principal were not incapacitated. If a durable power of attorney is in effect, a decision of the conservator takes precedence over that of an attorney-in-fact.
- (e) Transaction set aside. If a protected person has made a financial transaction or a gift or entered into a contract during the two-year period before establishment of the conservatorship, the conservator may petition for court review of the transaction, gift, or contract. If the court finds that the protected person was incapacitated or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the court may declare the transaction, gift, or contract void except as against a bona fide transferee for value and order reimbursement or other appropriate relief. This paragraph does not affect any other right or remedy that may be available to the protected person with respect to the transaction, gift, or contract.
- (f) After the filing of the petition, a certificate of the district court certified to that fact may be filed for record with the Minnesota secretary of state in the same manner as provided in section [336.9-501](#). The certificate shall state that a petition is pending and the name and address of the person for whom a conservator is sought. If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessities, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage houses, or other financial institutions, or transfer of cash or securities, made by the protected person after the filing and before the termination of the conservatorship shall be voidable.

APPOINTMENT AND DUTIES

At the court hearing the Probate Court decides what action should be taken. The Court:

1. May decide to order a less restrictive alternative.
2. May simply make a Protective Order to best protect the interest of the respondent without appointing anyone as guardian or conservator.
3. May decide that the Petition be granted or denied.

At the hearing, the petitioner and the proposed guardian or proposed conservator usually will testify in the courtroom. The respondent is presumed to be capable of managing his or her own affairs and the burden to prove the existence of incapacity rests with the petitioner. When a conservator is appointed, a bond will be required by the Court. The Court determines the amount of the bond. When the following documents are filed with the Court, Letters of Guardianship and/or Conservatorship will be issued: (1) acceptance of appointment; (2) affidavit of mailing of the notice of entry of order; (3) in conservatorships a bond; and (4) in guardianships a background check, if applicable. Corporate fiduciaries are required to file an acceptance of appointment. A certified copy of the Letters is the newly-appointed guardian's or conservator's evidence of authority to act on the ward's or protected person's behalf.

GUARDIAN'S REQUIREMENTS AFTER APPOINTMENT

(NOTE: In order to meet archival standards ALL FORMS MUST BE COMPLETED IN DARK BLACK INK, EITHER TYPED OR PRINTED LEGIBLY.)

1. **Personal Well Being Report.** In cases where a guardian is appointed, the guardian(s) must file a Personal Well-Being Report yearly. A copy of this report must also be given to the ward and sent to all interested persons named in the Petition within 30 days of the anniversary date of the appointment of the guardian(s). If there are co-guardians, each guardian is required to sign the report.
2. **Annual Notice of Rights.** Every year within 30 days of the anniversary date of appointment, the guardian(s) must give the ward and interested persons named in the Petition a notice of the ward's right to petition the court for restoration to capacity.
3. **Notice of Intent to Dispose of Personal Property.** Notice must be given to the ward and to all interested persons named in the Petition, if the ward's personal property (clothing, furniture, vehicles, and other personal effects) are to be sold or disposed of. This notice must be given ten days or more before such sale or disposition. See [Minnesota Statutes § 524.5-313\(c\)\(3\)](#). A copy of this notice is filed with the Court.

4. **Required Signatures.** If two or more people are appointed as guardians, every document signed on the ward's behalf must have signatures of all guardians.
5. **Report Filing Requirements.** Annual reports are due within 30 days of the anniversary date of the guardian's appointment. If an annual report is not filed within 60 days of the required date, the law states that the Court shall issue an order to show cause. Failure to appear in court after issuance of an order to show cause may be grounds for a finding of contempt and the Court may issue a writ of attachment for the sheriff to bring the guardian before the Court.
6. **Death of Ward.** If the ward dies, a copy of the Death Certificate is required to be filed to close the guardianship. If you are unable to obtain the Death Certificate, a copy of the obituary notice with the published dates will be acceptable.
7. **Death of Guardian.** If the guardian dies, a Death Certificate is required to be filed along with a Petition to appoint a successor guardian. If you are unable to obtain the Death Certificate, a copy of the obituary with the published dates will be acceptable. If there are co-guardians appointed, Amended Letters will be signed and filed with the court after the Death Certificate or obituary notice is received removing the deceased guardian's name.

CONSERVATOR'S REQUIREMENTS AFTER APPOINTMENT

(NOTE: In order to meet archival standards ALL FORMS MUST BE COMPLETED IN DARK BLACK INK, EITHER TYPED OR PRINTED LEGIBLY.)

1. **Inventory.** Within 60 days of the appointment of the conservator, an Inventory must be filed with the Probate Court. The Inventory should list all the property belonging to the protected person. It is the conservator's responsibility to see that you or your attorney submits the Inventory on time. **NOTE: You will be required to file the Inventory electronically. It is very important that you immediately complete the required training.**
2. **Checking Account.** A fiduciary checking account must be opened and all monies and income should be deposited in this account. **CANCELED CHECKS and BANK STATEMENTS** (whether paper or electronic) must be kept for audit by the Court to verify expenditures.
3. **Annual Account.** Every year, within 30 days of the anniversary date of appointment, the conservator must file an Annual Account with the Probate Court. A copy of the Annual Account must be given to the protected person unless the Court waives the notice. An Affidavit of Mailing that this service has been made must be filed with the Court. **NOTE: You will be required to file your Annual Account electronically. It is very important that you immediately complete the required training.**

In Ramsey County, the accounts of conservators will be examined in a court hearing the **FIRST YEAR** and every **THREE** years thereafter. The conservator must attend the hearing on the account. It is advised that the conservator consult with an attorney to ensure that the forms and reporting requirements are completed appropriately.

4. **Annual Notice of Rights.** Every year within 30 days of the anniversary date of appointment, the conservator must give the protected person and interested persons named in the Petition a notice of the protected person's right to petition the court for restoration to capacity.
5. **Final Account.** If the protected person is restored to capacity or dies, a Final Account must be filed and a written discharge must be obtained from the court.
6. **Required Signatures.** If two or more people are appointed as conservators, every document signed on the protected person's behalf must have signatures of all conservators. When filing electronically, the names of all conservators must be typed on the signature line.
7. **Report Filing Requirements.** Annual reports are due within 30 days of the anniversary date of the conservator's appointment. If an annual report is not filed within 60 days of the required date, the law states that the Court shall issue an order to show cause. Failure to appear in court after issuance of an order to show cause may be grounds for a finding of contempt and the Court may issue a writ of attachment for the sheriff to bring the conservator before the Court.

CONCLUSION

Guardianships and conservatorships are protection for both the ward or protected person and the guardian or conservator. The ward or protected person is protected by court monitoring of the ward's well being and the protected person's property. In addition, the estates of protected persons are protected by fiduciary bond. The guardian or conservator is protected by the permanent record kept in Probate Court of all well-being reports and financial dealings. Also, a record is kept in Probate Court of the annual service of a Notice of Rights to the ward or protected person. If at any point in a guardianship or conservatorship proceedings a procedural question arises, court personnel may be able to give assistance. The general information number at the Ramsey County Probate Court is (651) 266-8145. By statute, court employees may not give legal advice.

IMPORTANT NOTICE

PLEASE READ CAREFULLY

RE: Electronic Filing of Inventory and Accounts

The Ramsey County Probate Court requires electronic filing of conservators' inventories and accounts. This filing system should enable you to complete an inventory or account more quickly and accurately. The filing can be conveniently accomplished via the Internet from any Internet access point.

The Probate Court has made the electronic filing mandatory. Training is provided for conservators, by means of Internet based tutorials. It is required that all conservators complete the training.

The electronic filing system has features which allow conservators to add information to their accounts throughout the year. Therefore, it is strongly suggested that you complete the training as soon as possible. If you wait until the last minute, you may not be able to file your Inventory or Annual Account in a timely manner.

If you do not receive information on how to access the Internet based tutorials within one week of your appointment, please call the Probate Court office at 651-266-8145 to request the information.