



HOW TO GET A GUARDIANSHIP AND/OR CONSERVATORSHIP

When an individual is no longer able to make important decisions for themselves due to factors like age or illness, a guardianship and/or conservatorship may be a last resort for a trusted person to make decisions for the individual and protect their finances and property. Guardians or conservators are responsible for arranging for the care, custody, and support of the individual.

What are Guardianships and Conservatorships?

The court appoints a person to make personal decisions for an individual, often a senior, who lacks ability to make important decisions. A guardian generally makes decisions related to the health and physical welfare of the senior. A conservator generally makes decisions related to the financial situation of the senior. Since the individual becomes a “ward” of their guardian and/or conservator and loses many legal rights, guardianship/conservatorship should be a last resort, only when getting a power of attorney is not possible. A guardian and/or conservator can be appointed only after the court finds that the individual is incapacitated based on evidence. Any person who meets the requirements (including a criminal background check) can be appointed a guardian or conservator. Guardianships can be costly, and take a lot of work, since they involve a court process. Potential conservators must buy an expensive bond.

How is a guardianship or conservatorship set up?

Someone interested in the individual’s welfare must file a petition in Superior Court, Probate Division, requesting appointment of a guardian or conservator. Once the petition is reviewed by the Probate Division and accepted for filing, a hearing is scheduled. An attorney is then appointed for the individual by the court to represent the expressed wishes of the individual throughout the court proceedings. Before the

hearing, the court may appoint a visitor (usually a social worker) or examiner (often a doctor) to visit the individual to assess their mental and emotional status and decision making capacity. A court hearing is held, where a judge will decide based on the facts whether to appoint a guardian and/or conservator and the extent of that authority. The judge can appoint an independent attorney to be the guardian and/or conservator. The senior must be present at the hearing, unless the judge agrees their presence can be waived. The person who filed the petition and any visitor or examiner appointed by the court must also appear at the hearing. The senior has a right to contest the petition and present evidence about their situation if they do not want a guardianship.

What is the role of a guardian and/or conservator?

The guardian and/or conservator must remain personally acquainted with their ward in order to know their capacities, limitations, needs, financial situation, and physical and mental health condition. They must personally visit the ward at least once every 30 days and submit reports every six months to the court on the condition of the ward. The guardian and/or conservator needs to file a Guardianship Plan with the Probate Court within 90 days of being appointed. Guardians or conservators may be given the right to make contracts for a ward, the right to manage property, the right to give informed consent for medical treatment, and other important rights to make decisions for the ward. Only trusted individuals who take account of the ward's best interests and do not have a criminal record should be appointed as a guardian or conservator.

Can a guardianship or conservatorship be ended?

If a guardian or conservator is not fulfilling their duties, a complaint may be filed with the Guardianship Assistance Program. The ward or a person interested in their welfare may seek to end a guardianship or conservatorship by filing a petition for removal with the Probate Court. A hearing will be held to decide whether a guardianship or conservatorship is still needed and, if so, whether a different guardian or conservator should be appointed. Guardianship or conservatorship ends upon the ward's death.

If a senior in your life is age 60 or over and you would like to learn more about guardianships, call Legal Counsel for the Elderly (LCE) at (202) 434-2120 for assistance. LCE provides free legal services for low-income individuals.

This flyer is informational only and is not a substitute for legal advice.