

Guardianship_Conservatorship

What is a Guardianship or Conservatorship?

Guardianships and conservatorships are court-created and court-supervised relationships between two people. In a guardianship a person, called the “guardian,” is given authority to act for the other person, called the “protected person” (or, previously, the “ward”). A conservatorship is based on the same principle, but the person given authority to make decisions for the protected person is called a “conservator.”

The law generally recognizes two varieties of guardianships and conservatorships. One is for “individuals in need of protection” as mentioned above. A second is for minors (children under the age of 18). Different requirements and procedures govern guardianships and conservatorships for minors and for protected persons. This discussion focuses on guardianships and conservatorships for protected persons.

Under South Dakota law, a “guardian” has authority over personal and healthcare decisions while a “conservator” has authority over the protected person’s property and financial affairs. For some people needing protecting, only a guardian is appointed; for others, only a conservator is appointed, and there are situations where both a guardian and a conservator are appointed for a person. The guardian and the conservator may be the same person or the court may appoint two or more people. Sometimes, two or more co-guardians or co-conservators are appointed to act together. It is also not uncommon for a “limited guardian” or a “limited conservator” to be appointed. A limited guardian or conservator would have limited authority or responsibilities as the protected person may still be able to make certain decisions for themselves.

Why would a Guardian or Conservator be appointed?

A guardian may only be appointed for someone whose ability to respond to people, events, and environments is impaired to such an extent that they lack the capacity to meet the essential requirements for their health, care, safety, habilitation, or therapeutic needs without help from a guardian. A conservator can be appointed only if the person's ability to respond to events, people, and environments is so impaired that they lack the capacity to manage their financial affairs or give support of their dependents without help from a conservator.

What role do Guardianships or Conservatorships play in estate planning?

Estate planning is often thought of as planning what you do with your property at death. This kind of planning is typically accomplished through a will or a trust. If someone dies without a will, there are rules on how that person's property will be distributed – this is also known as intestate succession. But a secondary aspect of estate planning is to plan for the chance of future incapacity. Some people will experience a time when they are unable to care for themselves or manage their property on account of dementia or other reasons. A guardianship or conservatorship is a court process for those who didn't plan for this possibility in advance.

Guardianships and conservatorships help make sure people, their interests, and their property, are properly cared for. They serve an important role to protect the physical and financial well-being of those who cannot do so themselves. However, guardianships and conservatorships must be approved and overseen by a court, which may have court costs and attorney's fees. Therefore, it is generally recommended that guardianships or conservatorships be avoided through a power of attorney, a living will, a living trust, or other planning mechanisms.

The law also permits individuals to nominate who they would like to see appointed as their guardian or conservator in advance of an incapacity. A nomination of a guardian or conservator can be made as part of a power of attorney document or as a separate document. If the person has capacity to form a preference, a nomination can also be articulated by an oral ask to the judge. The court is required to appoint a person as guardian or conservator who will serve in the best interests of the protected person.

What are the advantages of a Guardianship or Conservatorship?

Guardianships or conservatorships allow control over the financial, personal, and medical needs of a protected person. They may allow money and property to be managed to help the protected person and be applied for their benefit. They also allow certain medical decisions to be made to make sure the person is properly cared for. Without the help of a qualified guardian and conservator, an individual's needs can go unmet.

What are the disadvantages of a Guardianship or Conservatorship?

A guardianship or conservator are limited to what can be found in South Dakota statute. For instance, a conservator lacks the power to make any changes to the protected person's will or trust without court approval. A conservator must follow a particular procedure for selling any property of the protected person. If a guardian isolates the protected person, they may be removed by the court. Guardianships and conservatorships may be expensive or time consuming to get from the court and may need court approval to do certain functions. Because guardianships or conservatorships are complex, potentially costly, and time consuming, it is generally preferred to avoid a guardianship or conservatorship, if possible.

How is a Guardian or Conservator appointed?

A guardian or conservator can only be appointed by the court. A petition explaining the need for a guardianship or conservatorship must be filed. An evaluation report from a doctor, a licensed psychologist, or a psychiatrist must be completed and filed with the court. A financial statement showing the financial resources of the protected person must also be prepared and filed. Formal legal notice of the ask for the appointment along with the time and place scheduled for a hearing on the ask must be carried out and documented for the court. The person for whom a guardian or conservator is sought must attend the hearing, is entitled to an attorney, and may resist or contest the request.

Anyone can apply to take part in the hearing and the court will grant an ask if it determines that it would be in the best interests of the person who may need protection. The court must inform the person of their right to an attorney, the right to contest the proceeding, the contents of the petition, and the purpose and effect of the appointment of a guardian or conservator. If the court does appoint a guardian or conservator, “letters of guardianship” or “letters of conservatorship” are issued by the judge.

What happens after a Guardian or Conservator is appointed?

Even after the hearing, a guardianship and conservatorship continues to work under the supervision of the judge. Record keeping and ongoing involvement are required. At least once a year, a guardian must file an annual report with the court. Within ninety days of being appointed, a conservator must file an inventory. Then, at least once a year, a conservator must file a detailed and correct accounting.

Although guardianship and conservatorships can be costly and time-consuming, they do a vital act in helping make sure proper care and management of a protected person’s healthcare and finances.

Is there any special training to be a guardian or conservator?

Yes. The State of South Dakota requires you to review two training videos and submit a proof of attendance certificate. You can find this information located on t [heir website](#).

[Video 1](#)

[Video 2](#)

Is Your Special Needs Child Turning 18?

Check out these INFOGRAPHICS to help you understand Transfer of Rights

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Last updated on May 19, 2022.

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