

**ADVOCATE FOR THE  
RESIDENT: ALTERNATIVE  
DECISION-MAKERS AND  
YOUR ORGANIZATION'S  
ROLE**

AGING SERVICES OF MINNESOTA  
2012 INSTITUTE

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**GUARDIAN  
OF THE PERSON**

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**What is a Guardian?**

“Guardian” means a person who has qualified as a guardian for an incapacitated person pursuant to appointment by a parent or spouse, or by the court.

Includes a limited, emergency, or temporary substitute guardian but not a guardian ad litem.

- Minn. Stat. § 524.5-102

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## Who Qualifies as a Guardian?

- ⦿ Guardian currently acting in this state or elsewhere.
- ⦿ Agent appointed by resident in a health care directive.
- ⦿ Spouse of resident or someone nominated by a Will.
- ⦿ Adult child of Resident.

• Minn. Stat. § 524.5-309.

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## Who Qualifies as a Guardian?

(Continued)

- ⦿ Parent of resident.
- ⦿ Adult who has resided with resident for over six (6) months.
- ⦿ Adult related to resident by blood, adoption or marriage.
- ⦿ Court may appoint individual without priority - best interest of the person.

• Minn. Stat. § 524.5-309.

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## CONSERVATOR OF THE ESTATE

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## What is a Conservator?

- ⦿ Conservator -
  - a person
  - appointed by a court
  - to manage the estate of a “protected person.”
  
- Includes a limited conservator.
  
- Minn. Stat. § 524.5-102

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## Who may be appointed as Conservator of an Estate?

- ⦿ Nominated by the resident.
- ⦿ An agent nominated to manage property in a durable Power of Attorney.
- ⦿ Spouse.
- ⦿ Adult child.
- ⦿ Parent.

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## Who may be Appointed as Conservator of an Estate?

Continued)

- ⦿ An adult the resident resided with six (6) months prior to the filing of a petition.
- ⦿ Court may appoint individual without priority – *best interest of the person.*
  - Minn. Stat. § 524.5-413
  
- ⦿ Criminal background check required.
  - Minn. Stat. § 524.5-118

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What is Court Process to Appoint a Guardian/Conservator?

- Petition
- Filing Fee
- Notice to interested persons
- Court Hearing

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Health Care Agent

- What is a Health Care Directive?
- What is an Agent?
- When does the role of Agent begin?

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What is Court Process to Appoint a Guardian/Conservator?

- Oath and Acceptance
- Bond
- Letters Issued

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## WHAT HAPPENS AFTER APPOINTMENT?

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## Guardian's Duties

- ⦿ Establish where resident lives.
- ⦿ Provide for resident's care, comfort and maintenance needs.
- ⦿ Take reasonable care of the resident's clothing, furniture, vehicles and other effects.
- ⦿ To seek appointment of a conservator for resident's estate.
  - Minn. Stat. § 524.5-313.

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## Guardian's Duties

- ⦿ Not liable if exercises reasonable care.
- ⦿ Entitled to reasonable compensation and reimbursement of expenses.
- ⦿ Health Care Directive.
- ⦿ To give consent for resident's medical or professional care or treatment.

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## Guardian's Duties

- If procedure requires court approval, guardian petitions court for approval.
- To approve or withhold approval of any contract, *except for necessities*.
- To apply for governmental benefits on behalf of resident.
- Unless otherwise ordered by the court, the resident retains the right to vote.

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## Conservator's Duties

- To pay the reasonable charges for the support and maintenance of the resident.
- To pay all lawful debts of the resident.

Minn. Stat. § 524.5-417

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## Conservator's Duties

- The conservator has no duty to pay out of personal funds.
- Wherever possible and appropriate, should meet these requirements through governmental benefits or services to which the protected person is entitled.

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## Attorney-in-Fact

- ⦿ What is a Power of Attorney?
- ⦿ What is an Attorney-in-Fact?
- ⦿ When does a Power of Attorney take effect?
- ⦿ When does a Power of Attorney end?

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## When do you need a Guardian and/or Conservator?

- ⦿ Is there a change in condition?
- ⦿ Is there an outstanding debt?
- ⦿ Does the resident have assets?
- ⦿ Possible financial exploitation of the resident?
- ⦿ Little or no family involvement?

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