

What is Guardianship/Conservatorship?

Development Team of

Eileen M. Krumbach, Extension Educator, University of Nebraska; Richard J. Bischoff, Professor, UNL Department of Child, Youth and Family Studies; Sue Fredricks, Executive Director, Volunteers Assisting Seniors (VAS), Omaha; Thomas K. Harmon, Attorney at Law, Omaha; Bruce A. Cudly, Nebraska Region V Services; Dianne D. Delair, Staff Attorney, Nebraska Advocacy Services, Inc.; Julie J. Hippen, Program Specialist, Nebraska Department of Health and Human Services, Adult Protective Services; Marla J. Fischer-Lempke, Executive Director, The Arc of Nebraska; Mary Evans, Guardian; Sheryl L. Connolly, Trial Court Services Director, Administrative Office of the Courts

This publication describes the role of a guardian, including types of guardianships/conservatorships; rights, powers, and responsibilities of a guardian; and how to establish or end a guardianship. This NebGuide is the first in a series of seven.

Why Should I Be Interested In Guardianship?

Webster’s dictionary defines a Guardian as a person who guards or keeps safe and secure a minor child or an adult who the law regards as incompetent to manage his or her own affairs. Legally, a Guardian is “one who has, or is entitled to, the care and management of the person or property, or both.” A Guardian can be an effective safeguard to protect vulnerable citizens from exploitation and abuse.

Guardianship, then, is a legal relationship between a competent adult (Guardian) and an incompetent adult or minor child (Ward). Guardianship transfers rights and powers from the Ward to the Guardian, so that the Guardian has the power to make decisions on the Ward’s behalf. At the same time, Guardianship creates a duty on the part of the Guardian to act in the Ward’s best interests.

Guardianship is important because it allows a responsible person to substitute judgment for someone who cannot make or communicate

decisions. Even so, Guardianship should be used sparingly, precisely because Guardians have so much power.

Types of Guardianships/Conservatorships

- **Full Guardian** — a person appointed to make all decisions in all areas of a person’s life, for example, for a minor child or a person with advanced Alzheimer’s. If no Conservator is appointed, the Guardian is also the Conservator and has specific responsibilities. See *Guardian/Conservator Financial Responsibilities*, NebGuide G1595.
- **Limited Guardian** — a person appointed to make decisions in only those areas in which the Ward was found to be unable to handle his/her own affairs.
- **Temporary Guardian** — if an individual is alleged to be incapacitated and an emergency exists, the court may appoint a temporary Guardian to address the emergency.
- **Testamentary Guardian** — a person assigned in a person’s Last Will and Testament to serve as a Guardian, typically for a minor child. The Guardianship becomes effective after giving proper notice and filing an acceptance with the court.

- **Conservator**—a person appointed by a court to manage the estate (money and property) of a protected person. Decisions made by a Conservator can only be in regard to the spending, investing, and disposal of the estate. An individual may be found to be only in need of a Conservator for financial affairs. In some cases, an individual may have a Conservator as well as a Guardian appointed for other decisions.

What Powers Does A Guardian Have?

The Guardian has only the powers authorized by the Court and they are specified in the Letters of Guardianship. In areas designated by the Court, the Guardian of an incapacitated person has the same powers, rights, and duties toward the Ward as a parent has to a child.

The Nebraska Statute regarding Guardianship is Neb. Rev. Stat. 30-2620, 1998 cum. Supp. Following is a summary of the powers that may be conferred onto a Guardian by the Court:

- selecting the Ward’s place of living within the state or, with court permission, outside the state
- arranging for medical care for the Ward
- protecting the personal effects of the Ward (clothing, furniture, vehicle, etc.)
- giving necessary consent, approval, or releases on behalf of the Ward
- arranging for training, education, or other services appropriate for the Ward
- applying for private or governmental benefits to which the Ward may be entitled
- doing what is necessary to ensure that any person who may be required to help support the Ward does so
- entering into contractual arrangements on behalf of the Ward
- receiving money and any other items of value on behalf of the Ward and applying these funds to the Ward’s room and board, medical care, personal effects, training, education, and other services

- any other area of inquiry which the court may direct

A Guardian can be any competent person. Nebraska law states: “When appointing a Guardian, the court shall take into consideration the expressed wishes of the allegedly incapacitated person.”

Before an individual can be selected as a Guardian, he/she will need to obtain:

- a criminal record check;
- a report of the Abuse and Neglect Registries for adults and children;
- a report with the sex offender registry; and
- a credit check through a process approved by the State Court Administrator Office.

The results of all of these reviews must be filed with the county court 10 days before the appointment hearing.

There are many options for choosing a Guardian, but there are some restrictions. A Guardian cannot be an agency that provides residential care, or the owner, administrator, or employee (or his or her spouse) of a residential facility that provides care and treatment for the Ward.

Establishing A Guardianship

Guardianship proceedings begin with the filing of a petition in the county court in which the person alleged to be incapacitated lives. A petition may be filed by the person who allegedly is incapacitated or by anyone interested in the person’s welfare. For further information regarding petitioning for Guardianship, contact an attorney or the Nebraska State Bar Association.

Ending a Guardianship

How does a Guardianship end?

- For a minor, it ends at 19.
- For an adult, it ends at death or when the incapacity or incompetence no longer exists.

Alternatives To Guardianship

When a Guardian is appointed, the Ward loses independence and autonomy, as well as the power to exercise many legal rights. Families, friends, and advocates considering Guardianship should first review other options. Those options include providing guidance or acting as an advocate. Only when a person is truly unable to make or communicate decisions should Guardianship be considered.

Some alternatives to Guardianship include: a conservator, a trust, representative payee, durable power of attorney, and durable medical power of attorney.

Resources

Developmental Disability Law: A Manual for Nebraska Advocates, 1996. Nebraska Advocates Services N.R.R.S. 30-2601 through 30-2661.

Nebraska Revised Statutes, Article 26, Section 30, the Nebraska law regarding guardianships.

UNL Guardianship website at <http://www.extension.unl.edu/guardianship/> includes information, helpful links, and a calendar of educational workshops and programs.



This publication has been peer reviewed.

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