

3. General Information

- Q1: Generally, what is guardianship and conservatorship law?
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Q1: Generally, what is guardianship and conservatorship law?

A1: Most people at some point in their life will know a loved one who is unable to make responsible decisions about their finances, property, living situations or care. Guardianships and conservatorships are legal relationships designed to protect these vulnerable persons by providing court-appointed representatives to act on their behalf.

Q2: What is a guardian and what is a ward?

A2: A guardian is responsible for the care of the person or property, or both, of another person, who is incompetent to act for himself or herself. In other words, a guardian is a person or institution appointed by a judge to take care of and be legally accountable for a person who cannot take care of himself or herself.

The person that the guardian is responsible for is called the ward. Wards are either minor children or incapacitated persons.

- A minor child is someone who is under the age of majority, which is under the age of 19 in the state of Nebraska. Neb. Rev. Stat. § 43-2101.
- An incapacitated person is an adult who is impaired because of one or more of the following reasons:
 - Mental illness.
 - Mental deficiency.
 - Physical illness or disability.
 - Chronic use of drugs or chronic intoxication.
 - Other causes (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself.

Neb. Rev. Stat. § 30-2601(1).

Guardianships serve as a way for people to get the legal authority to make decisions for a person who is in need of continuous care. Guardians must act in the best interests of their ward while still taking into account their ward's desires and preferences. Guardians must not, in any circumstances, act in a way that is self-serving or in a manner that is adverse to their ward's well-being.

It is important to remember that guardians are granted a great deal of power over their wards. For instance, an incapacitated adult may no longer be able to arrange for their own medical care, make financial decisions, or even decide whom they would like to marry once a full guardianship is ordered. Because of the confining nature of guardianships, other "less restrictive" means should be explored before pursuing a guardianship. See also Surrogate Decision Making.

Q3: What is a conservator and whom do they protect?

A3: A conservator manages the financial and business responsibilities of a protected person. A protected person could be a child or an adult for whom a conservator has been appointed or protective order has been made. Neb. Rev. Stat. § 30-2601(3).

Q4: What are the powers of a guardian?

A4: Guardians have the power to care for their ward to the extent that the court allows them to do so. Guardians have a fiduciary relationship with their ward, which means they are in a position of trust and must act in the best interests of their ward. A full guardian has the power to:

1. Establish where the ward will live, within the state or elsewhere with court's permission;
2. Arrange for the ward's medical care;
3. Take care of the ward's personal effects (clothing, furniture, vehicles, personal items, etc.);
4. Give the necessary consent, approval, and releases on behalf of the ward;
5. Arrange for training, education, or other habilitating services for the ward;
6. Apply for private or governmental benefits that the ward is entitled to receive;
7. Take the necessary steps to ensure that anyone required to help support the ward does so;
8. Enter into contractual arrangements on behalf of the ward, if no conservator is appointed;
9. Receive money and tangible property on behalf of the ward and use these funds for the ward's room and board, medical care, personal effects, training, education, and services;
10. Utilize any other power the court may delegate.

Neb. Rev. Stat. § 30-2620(a), § 30-2628(1)-(3).

Q5: How are guardianships or conservatorships created?

A5: Guardianships or conservatorships are created by a person who files a Petition for Guardianship in the county in which the alleged vulnerable adult resides. After filing a petition, the court considers the question: is the person truly incapacitated? If satisfied by clear and convincing evidence that the person is incapacitated, the court will form a guardianship or conservatorship if it believes such measures are necessary and are the least restrictive alternative available. Least restrictive alternative may mean the court could order a "limited guardianship" meaning that only some decisions (such as medical and living arrangements) are to be decided by the guardian whereas other decisions (purchasing daily necessities) are made by the ward. While the law states that guardianships will be a "limited" one unless the court deems full guardianship necessary, the majority of guardianships are "full." Neb. Rev. Stat. § 30-2620.

Names of individuals willing to serve as guardians and conservators are nominated (identified in the petition) by the petitioner. The judge then reviews the information about the nominee, and if found appropriate, the individual is appointed by judges. Often, but not always, guardians and conservators are a family member of the vulnerable adult. Neb. Rev. Stat. § 30-2627.

Q6: What are the different kinds of guardianships and conservatorships?

A6: The court will specify what type of guardianship or conservatorship it is creating. The following account for the different types of relationships:

1. **Guardian with control of the ward's assets.** A person who has been appointed as a guardian, and who has control of the ward's property, money, assets, possessions or income (including social security or other benefits). This type of guardian files annual documentation of the ward's activities (Packet A), including an "Annual Accounting," and is not to be confused with the "guardian with a court-approved budget."
2. **Guardian with a Court-Approved Budget.** This is a person who has been appointed as a guardian *and* the court has approved a budget.
3. **Conservator.** A person who has been appointed as a conservator to oversee the vulnerable adult's financial and property decisions.
4. **Both guardian and conservator.** A person who has been appointed as both guardian and conservator.
5. **Guardian without control of the ward's assets.** A guardian whose Letters of Appointment state that the guardian has no authority over the ward's assets. Such guardians cannot control assets, such as handle money or property, on behalf of the ward.

Q7: What rights does the ward retain when a guardian is appointed?

A7: A ward retains all the rights that a citizen of the United States would have, except those that the court grants to the guardian. The rights that the ward retains include:

1. Right to privacy, both regarding the body and with communications with others via mail, phone, or personal visits;
2. Right to appropriate services based on their needs;
3. Right to have the guardian take into account their desires and preferences;
4. Right to a safe, sanitary living environment;
5. Right to the least restrictive living arrangements as possible;
6. Right to not be discriminated against based on race, religion, creed, sex, age, marital status, sexual orientation or political affiliations;
7. Right to have explanations of any medical procedures or treatment;
8. Right to have personal information kept confidential;
9. Right to speak privately with an attorney, ombudsman or advocate; and
10. Right to petition the court to terminate a guardianship or to bring a grievance against a guardian.

However, a ward's right to marry, divorce, and to procreate may be controlled by the guardian or by the court, depending on the scope of the guardianship and the nature of the circumstances. A guardian has similar powers, rights and duties respecting their ward as a parent has respecting their children. Neb. Rev. Stat. § 30-2628. See generally, Surrogate Decision Making In Nebraska, Rights of an Individual Under Guardianship.
