

## Arc Guide to Guardianship or Conservatorship

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Guardianship and conservatorship are substitute decision making alternatives for individuals who are unable to make and communicate responsible decisions. When an individual reaches the age of eighteen, they are a legal adult with full rights and responsibilities regardless of disability. However, if they need help making decisions, an alternative or substitute decision making process may be needed.

### **Alternative Options to Guardianship and/or Conservatorship**

Guardianship and conservatorship are considered the most restrictive alternatives of decision making. Other less restrictive alternatives that should first be considered include, but are not limited to: informal supervision, joint bank accounts, health care directives, financial power of attorney, trustee of the estate, and representative payee.

### **Guardianship**

Guardianship should be considered when individuals are unable to understand, make, and/or communicate responsible personal decisions, and less restrictive alternatives do not ensure their well-being. There is both limited and full guardianship. Limited guardianship awards the guardian legal power to make decisions in some areas of the individual's life. Full guardianship awards the guardian legal power to make decisions in all areas of the individual's life. The legal powers of guardianship include:

1. Determining place of abode (where the person lives)
2. Care, comfort and maintenance (needs for shelter, nutrition and access to service)
3. Reasonable care for personal effects (clothing and furniture)
4. Medical or other professional care
5. Approval or withholding of contracts
6. Supervisory authority
7. Accessing government benefits

Individuals under guardianship are called "wards." Depending on the powers granted, guardians can make legal decisions on behalf of the ward. They may make decisions about where the ward lives, medical decisions and/or ensuring the individual is appropriately cared for. Guardians must provide well-being reports annually to the county district court where the guardianship is established.

### **Conservatorship**

Conservatorship is available for individuals who are unable to make and communicate responsible financial decisions. Individuals under conservatorship are called "protected persons."

Conservators make financial decisions for the protected person. They may be responsible for paying bills, investing assets, and other financial duties. Conservators must provide a

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financial accounting annually, to the county district court where the conservatorship is established.

### **How are guardianships and conservatorships established?**

Guardianship and conservatorship is a legal process administered by the district court. To establish guardianship or conservatorship, a petition is filed with the court in the county where the ward or protected person lives. After the petition is filed, a hearing is held where the judge decides whether the individual needs a guardian and/or conservator and who should be appointed. This process requires the person who files the petition to provide evidence that the individual is unable to make and communicate responsible decisions and cannot meet his or her personal needs.

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