
Avoiding Guardianship and Conservatorship

To avoid the need of a guardian and/or conservator it is essential to prepare an estate plan prior to incapacity. An estate plan should always include a health care power of attorney and a financial power of attorney designating the individual(s) to make healthcare decisions and manage financial affairs.

It is important to discuss long term care and end of life wishes directly with your family while you or your loved one are still able to express such wishes. Understanding your family member's preferences in these matters can provide great guidance and comfort as you attempt to honor and carry out those wishes.

If you believe a family member is in need of a guardian or conservator, consult with an attorney to assist in navigating the legal process for appointment as guardian and/or conservator and to understand your legal duties and obligations.

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Guardianships and Conservatorships



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Guardianships and Conservatorships

When a loved one becomes incapacitated and is no longer able to manage his or her affairs, it may be necessary to seek the appointment of a guardian and/or conservator in order to protect your loved one and his or her assets. A guardian and conservator is essentially a surrogate decision-maker appointed by the court for an adult with mental or physical disabilities.

Distinction Between a Guardian and a Conservator

A Guardian has the legal authority to handle the personal affairs of the incapacitated adult such as housing, health care decisions, food and other necessities.

A Conservator has the legal authority to manage the incapacitated adult's finances and property.

Determining if a Guardianship and/or Conservatorship is Necessary

An individual may need a guardian and/or conservator if he or she has physical or mental incapacities that interfere with the ability to take care of basic needs. Warning signs can include:

- Memory and decision making problems;
- Confusion and difficulty understanding or doing familiar tasks;
- Inability to communicate clearly;
- Problems remembering to take medications or not taking medications as directed;
- Inability to provide for the necessary food, shelter, and medical care;
- Lack of personal grooming;
- Unpaid bills; and
- Inability to manage money or make rational financial decisions.

Confer with the individual's primary care physician if possible. Generally if the incapacitated adult has assets, both a guardianship and conservatorship are needed.

Who can be Appointed Guardian and/or Conservator

Although any qualified person can be appointed as the guardian and/or conservator, Arizona law provides which individuals have priority of appointment. If the incapacitated adult has the mental capacity to nominate a guardian or conservator or previously nominated one, the nominated individual generally has priority. Otherwise, the guardian and conservator is typically the parent, spouse, partner, adult child, grandchild or other relative of the incapacitated adult.

Court Appointment as Guardian and/or Conservator

The procedural requirements to be appointed by the court as guardian and/or conservator can be frustrating and time consuming. Delays in the appointment of a guardian and/or conservator can hinder obtaining the necessary services and care. If you believe a family member is in need of a guardian and/or conservator, consult with an attorney to assist in navigating the legal process for appointment as guardian and/or conservator and to understand your legal duties and obligations.

Following appointment as Guardian and/or Conservator, the court continues to be involved in the incapacitated adult's affairs. This can create additional expenses for the incapacitated adult. Upon appointment as Conservator, the court may restrict the use and sale of some of the incapacitated adult's assets and the court generally will require the Conservator post a bond for the unrestricted assets. The Conservator is required to submit an inventory of the incapacitated adult's assets to the court, as well as an annual accounting detailing the incapacitated adult's income and expenses. A guardian is also required to submit an annual report to the court regarding the incapacitated adult's status and well-being.

Duties of a Guardian

A guardian has powers and responsibilities similar to those of a parent of a minor child. For example, the guardian must:

- Make appropriate arrangements for personal needs, including food and clothing;
- Make appropriate living arrangements based upon the incapacitated adult's needs and abilities, which may include at home with a care giver, in an assisted living facility or other care facility, as necessary; and
- Make appropriate arrangements for medical care and make decisions concerning such medical care.

When making these arrangements and decisions, the guardian should consider the wishes of the incapacitated adult to the extent he or she can express reasonable preferences, as well as the incapacitated adult's previously established values. The guardian must also use the least restrictive means and environment available to meet the incapacitated adult's needs.

Duties of a Conservator

The conservator is responsible for safe guarding and managing the incapacitated adult's assets and finances. This includes, among other things:

- Taking possession of the assets;
- Establishing a budget;
- Maintaining detailed records of receipts and expenditures made on behalf of the incapacitated adult;
- Paying the incapacitated adult's bills and expenses;
- Investing the assets and preserving and protecting the estate;
- Bringing or defending legal claims on behalf of the incapacitated adult;
- Handling insurance benefits and claims;
- Preparing and filing the incapacitated adult's federal and state income tax returns; and
- Hiring accountants, attorneys and financial advisors as necessary.

The conservator acts in a fiduciary capacity and must only use the incapacitated adult's assets for the incapacitated adult in his or her best interest.
