

Guardianship and Conservatorship: Frequently Asked Questions

What is the difference between a Guardian and a Conservator?

A guardian is a person appointed by the court who is responsible for the personal affairs of an incapacitated person. A conservator is a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person.

Do I need to become his or her Guardian and/or Conservator?

It is critical to remember that guardianship takes away all rights an individual has; including the right to vote, the right to get married, the right to sign contracts, the right to make medical decisions, and the right to rent an apartment. Therefore it is important to ask yourself what you want to expect if you or an agency becomes a guardian. For best practices, we encourage you to consider least restrictive alternatives first, prior to implementing full guardianship.

I have looked at all the alternatives and feel that I should move forward with either full guardianship, limited guardianship and/or conservatorship.

To move forward there needs to be a petition sent to your local court. This is completed after consultation by an attorney. You can access an attorney yourself or ask the individual's case worker if they have any resources to assist you in that process.

My brother needs a guardian and a conservator and I would prefer not to be that person, do I have any options?

Before choosing to become a guardian and/or conservator it is critical to fully understand the duties and responsibilities of each role. These can be time consuming so it is important to be honest with yourself about the time, energy and skills that you will need to have to take on this role. It is also important to consider

the impact this guardianship/conservator role will have on your relationship with your loved one.

What alternatives are available?

Durable medical power of attorney. This authorizes the appointed person to make medical decisions as well as receive information on behalf of the individual.

Limited Guardianship. Guardianship often include "full guardianships" meaning that ALL rights of an individual are taken away and all decisions are left to the court appointed guardian. Limited guardianship can specifically designate what decisions the court appointed guardian is responsible for and what decisions the incapacitated individual can continue to make on their own. For instance, if you are pursuing guardianship for the purposes for medical decision-making and financial purposes only, then the court order can specify that the incapacitated person will reserve his or her right to vote, get married, rent an apartment, etc.

Representative Payee or Conservatorship. If you are thinking of becoming the guardian and conservator for an individual for the sole purpose of handling their finances, then two alternatives. These include becoming the representative payee or conservator.

Representative Payee. A Representative Payee is an option if the individual is receiving Social Security Benefits only. This is a designation that can be obtained with a medical professional's recommendation and a determination by your local Social Security Administration Office.

Conservatorship. A conservatorship is obtained through legal proceedings. This can be petitioned for when the individual has financial resources or an estate beyond Social Security Benefits.

Resources

- For additional information about guardianship there is a [Virginia Handbook for Guardians and Conservators](#) by John T. Molumphy, III and Harriette Shivers. This book is available from the Virginia Guardianship Association or The Arc of Northern Virginia.
- The Arc of Northern Virginia has developed a Guardianship Checklist for those considering Guardianship. [Thinking about Guardianship checklist](#)

- Your local community services board (CSB) may be a resource for you. The CSB's may have Guardianship services where volunteers serve as Guardians.
- The DARS Office for Aging Services, Division of Community Living has a [Virginia Public Guardianship Program](#) with information and resources about guardianship options.)
- There are also Public Guardianship programs (such as ours) throughout the state. Many of the Public Guardianship Programs have private pay guardianships. It may be helpful to call the programs to inquire about their services. Here is a list of Virginia [Public Guardianship Programs](#).
- Attorneys often serve as guardians. You may contact an attorney directly to provide this service.
- The Arc of Northern Virginia serves as [public guardians](#) for a limited number of individuals who are indigent and have no family or loved ones who can serve as their guardian. Our Guardianship of Last Resort (GOLR) program is contracted with the Department of Aging and Rehabilitative Services (DARS).

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