

# GUARDIANSHIP

Arc Northland

# Define

- **Guardianship** is of the person and their decisions. A guardian cares for the person, property, or both, of another person unable to care for him/herself who is known as the ward after age 18.
- **Where to live & the consent to or refuse medical treatment**
- Petitioner – Person trying to obtain guardianship
- Ward/Respondent- person under guardianship

- **Conservatorship**-manages the financial affairs of a minor or other person who can no longer manage his or her own property or financial matters.
- Protected person-a person for whom there is a conservatorship of the estate.

# Least Restrictive Alternatives to Guardianship



- Definition: an option which allows the person to maintain as much autonomy and self-determination as possible while protecting the person
- Voluntary (person agrees to the arrangement) and involuntary planning tools (another person makes arrangement on person's behalf)

# Least Restrictive Alternatives to Guardianship *(continued...)*

- **Voluntary Alternatives for Personal Needs:**
  - Health Care Declaration (Living Will)
  - Advance Psychiatric Directive
  - Individual and/or Family Plan
  - Case Manager Plan
  - Health Care Facility Plan

# Least Restrictive Alternatives to Guardianship *(continued...)*

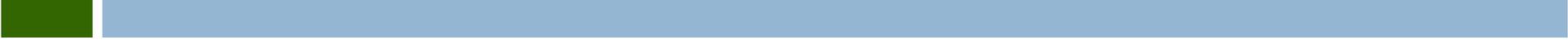
- **Voluntary Alternatives for Financial Needs:**
  - Banking Options
  - Power of Attorney (POA)
  - Trusts
  - Social Security representative payee

# Arc National Position on Guardianship



- The appointment of a guardian and/or conservator is a serious matter that involves the limitation of a person's independence and rights.
- Appointment of a guardian and/or conservator should be made only to the point necessary for the protection and welfare of the person.

# Who Cannot Be a Guardian?



- Paid caregivers, unless related to the person by blood, marriage, or adoption.
  - Paid care givers:
    - ❖ Individual or entity providing residence, custodial care, medical care, employment training or other care or services for the person for which they receive a fee.

# On-going Duties of a Guardian

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- **-Provide for the ward's care, comfort, and maintenance needs** (including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation).
- -The guardian has **no duty to pay** for these requirements out of personal funds. But the guardian **does have the responsibility to meet these needs out of government benefits or services** whenever possible, rather than the ward estate.

# On-going Duties *(continued...)*



- Carry out duties granted by the court
- Maintain current understanding of needs of the person
- Annual report of well-being
  - ▣ Re any changes in medical, living, mental and emotional conditions of the person; any hospitalizations; etc.
- Last note: Respect for the rights maintained by the person must remain the primary concern of the guardian/conservator

# Conservatorship



- Power over estates and financials.
- Most people prefer just guardianship.
  - Duties:
    - Paying reasonable charges for the support, maintenance and education of the protected person (Made from the ward's estate)
    - Duty to seek government benefits or services for the protected person to meet those needs.
    - Applies for public benefits.
    - Each year must give the court a report that includes a list of the assets of the estate under the conservator's control (including all receipts, disbursements and distributions made during the reporting period.)

# Rights of Protected Persons:



- The right to be treated with dignity and respect.
- The right to protection from harm.
- The right to privacy, right to unimpeded, private and uncensored communication, and the right to visit with person's of the person's choice.
- The right to procreate.
- The right to receive health care and medical treatment.
  - ▣ *MN Statute specifies that care is timely and appropriate and does not violate known conscientious, religious, or moral beliefs of the person.*

# Rights of Protected Persons *(continued)*:

- The right to refuse medical treatment.
  - ▣ *This right may be exercised by the guardian on behalf of the person when it is reasonable and in the best interest of the person, such as the guardian consenting to a physician's order of do not resuscitate)*
- The right to vote.
- The right to decide what will happen to personal belongings upon death.
- The right to have personal desires, preferences and opinions given due consideration when decisions are made (including medical decisions).

# Rights of Protected Persons *(continued)*:



- The right to legal representation.
- The right to marry.
- The right to exercise control of all aspects of life not delegated specifically by court order to the guardian or conservator.
- The right to guardianship or conservatorship services individually suited to the person's conditions and needs.
- The right to petition the court to prevent or initiate change in abode.

# Rights of Protected Persons *(continued)*:



- The right to care, comfort , social and recreational needs, training, education, habilitation and rehabilitation care and services within available resources.
- The right to petition the court to termination or modification of guardianship or conservatorship.
- The right to vote, unless restricted by the court.

# When is Guardianship Necessary?

- When does an adult person need a guardian?

- the individual lacks the understanding *or* capacity to make *or* communicate reasonable personal decisions,

- AND**

- whose behavior shows that he or she is unable to meet personal needs for medical care, nutrition, clothing, shelter, *or* safety *even with appropriate technological assistance.*

# Powers a Guardian may hold:



- ❑ To decide where the person will live
- ❑ To make decisions about the person's personal property such as clothing, furniture and personal effects
- ❑ To give consent for medical care or treatment
- ❑ If there is no conservator of the estate, to make or to withhold approval of contracts for the ward
- ❑ If there is no conservator of the estate, to apply for government benefits or assistance for the ward
- ❑ To Exercise general supervision.

# General Limits on a Guardians Power



- The basic rule is that a guardian's powers are limited to what the court authorizes the guardian to do.
- The law says that the court should only give a guardian, "those powers needed to provide for the needs of the incapacitated person."
- Rights of the Person

# Specific Limitations



- ❑ A guardian may not consent to medical care for a ward “which violates the known conscientious, religious, or moral belief of the ward.”
- ❑ Court approval, after notice to “interested persons” is required for psychosurgery, electroshock, sterilization, or experimental treatment.
- ❑ A guardian may not admit a ward to a regional treatment center except for outpatient services for temporary care for no more than 90 days in any calendar year, or by going through the commitment process in court.

# Specific limitations continued...



- The guardian's general power to supervise the ward has to be used in a way that "limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services."
- A guardian has to give notice to "interested persons" before disposing of a ward's personal property or personal effects.

# Differences between Partial/Limited and Full Guardianship

## Partial/Limited Guardianship:

- ▣ Place of abode.
- ▣ Provide for the Ward comfort care and maintenance needs.
- ▣ Apply on behalf of the Ward for any assistance, services, or benefits available to the Ward through any unit of government
- ▣ Decisions over medical or other professional care.
- ▣ Approve or disapprove any contracts (cell phone contract).
- ▣ Exercise supervision authority over the Ward
- ▣ Caring for the wards clothing, furniture , vehicle ect.

# Full Guardianship



## Full Guardianship:

- Power over ALL of the areas listed under Partial/Limited Guardianship

# How the process works:



- Once the entire packet is completed, return to the Courthouse (Room 320 – Probate Clerk)
- The court will send a visitor from St. Louis human service system to your home to interview the person. They will complete and submit a visitor report to the court.
  - ▣ *This is similar to an assessment and includes their recommendations to the court to grant guardianship or not*
- A court date will be set → Usually 3 months

# Afterwards



- Once process complete and guardianship granted, the court will ask the new guardian send a letter to all:
  - adult siblings,
  - spouses,
  - previous guardian/conservators,
  - rep-payee,
  - hospital, or nursing homes
  - Responsibility of mailing each (kindred, spouse, adult siblings, previous Guardian, Rep-payee...) that this has taken place.

# Co-Guardians

- What is necessary if petitioning for co-guardianship?
  - ▣ Both individuals need to complete the appropriate documents in the application packet
    - *Note: Only one individual necessary to PETITION for guardianship*
  - ▣ Jointly responsible if granted – must agree and sign on all related decisions
  - ▣ Possible alternative requests/arrangements can be made.
    - If co-guardians want to act independently of one another, the statement “A co-guardian requests the power to act independently of each other regarding the signing of medical and other consent forms.” should be included as a separate document in the application process.
    - This can also be arranged during the hearing.

# A few helpful notes in completing the packet:

- The guardianship packet information is all based upon the WARD's (child) income.
- The background study is waved in certain circumstances:
  - ▣ If person seeking guardianship is a parent,
  - ▣ has lived with the person their entire life and
  - ▣ has a diagnosis of an Intellectual/Cognitive Disability.

# Probate Clerk Contact Information



- St. Louis County Courthouse (Duluth, MN) Probate Clerk, Room 320
- 218-726-2529