CONSERVATORSHIP
AND
GUARDIANSHIP
IN
MINNESOTA

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CHAPTER I

I. INTRODUCTION

A. PURPOSE: In April 1996 the Minnesota Conference of Chief Judges completed the **Report of the Minnesota Conference of Chief Judges Committee on the Treatment of Litigants and Pro Se Litigants.** The Pro Se Litigant Implementation Committee made various recommendations within this report addressing the growing number of Pro Se litigants and the need for accurate and consumer friendly information regarding court procedures. A Pro Se litigant is a person who appears on his or her own behalf in court and does not retain a lawyer. From this committee a Probate and Mental Health Subcommittee was established which assigned a work group to specifically address the area of Conservatorship and Guardianship proceedings.

This manual is the result of that work group's efforts. The work group adapted and edited existing and new materials to develop this book. The Probate and Mental Health Subcommittee's Conservatorship and Guardianship Work Group, and the Minnesota Conference of Chief Judges would like to thank the many individuals who contributed to this effort for their time and expertise and to recognize the organizations they represented: Arc Minnesota, Ebenezer Protective Services of Fairview Senior & Social Services, the Minnesota Association for Guardianship and Conservatorship (MAGIC), and the Public Guardianship Office of the State of Minnesota Department of Human Services.

B. USE OF THIS MANUAL: The information here is a discussion of the Guardianship and Conservatorship process and what the expectations are of the court and the Guardian or Conservator. Nothing in this book should be construed as legal advice. Due to the complexities of many of the proceedings to establish or maintain a Guardianship of the person or Conservatorship of the estate, it is recommended that a person seek out the legal advice of a competent attorney with experience in Guardianship or Conservatorship law.

This manual is a discussion of Guardianship and Conservatorship of adults only. It does not contain information regarding Guardianship or Conservatorship of minors.

The information includes brief, easy to read sections which may be used individually or in its entirety. These sections are designed to be self-instructional. The *Conservatorship and Guardianship in Minnesota* manual **is not copyrighted**. You are encouraged to make additional copies of any or all parts of this manual for your use.

The forms referred to in this manual may be found on the state court website. Although most district courts will accept these forms, some may have specific forms which they accept. It is recommended that the Court Administrator's Office of the Probate Division of the District Court in which the petition will be filed be contacted to determine which forms to use and what the correct filing fee will be.

II. GENERAL OVERVIEW

A. CONSERVATORSHIP AND GUARDIANSHIP: A conservatorship or guardianship is established through a legal action, or proceeding. The person who files a petition with the court requesting that a conservatorship or guardianship be established is the petitioner. In this proceeding, the court orders the appointment of a person (a conservator or guardian) to act as a decision maker for another person (the protected person or ward). The court bases this decision on clear and convincing evidence that the protected person or ward has been found to be unable to make necessary decisions on his or her own behalf. The court calls this *making a finding of incapacity*. Guardianship or conservatorship should only be sought if the individual's judgment or decision making is a major threat to the individual's welfare.

1. What does incapacity mean? *Incapacity* is proven when the petitioner, the person who is asking the court to appoint a conservator/guardian, can provide evidence to the court that the proposed ward/protected person is unable to make responsible personal decisions, and is also unable to meet his or her needs.

   In the case of guardianship of the person, an incapacitated person is:

   "an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance." (Minnesota Statutes section 524.5-102, subdivision 6).

   In the case of conservatorship of the estate, an incapacitated person is:

   "an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance" (Minnesota Statutes section 524.5-102, subdivision 6) and the incapacity is proven:
   "(1) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States;
   (2) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money; and
   (3) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance." (Minnesota Statutes section 524.5-409(a)).

2. What is the difference between Conservatorship and Guardianship? A guardian is appointed to make the personal decisions for the ward. The guardian has decision making authority for matters such as choice of place to live, medical decisions, training and education, etc. A conservator is appointed to make financial decisions for the protected person. The conservator typically has the power to contract, to pay bills, invest assets, and perform other financial functions for the protected person.

3. Guardianship: At a guardianship hearing the Court makes a finding based on clear and convincing evidence that the ward is incapacitated. The person appointed is called the *guardian* and the person under guardianship is called the *ward*.

   Essentially, the guardian makes decisions regarding the ward's basic personal needs to the extent the court grants the guardian such power. Such decisions may include:

   - the choice of where to live, and
   - to consent to or refuse medical treatment.

   The guardian becomes responsible for making decisions in many areas of the ward's personal life. The guardian cannot decide on certain medical treatments; there are some medical treatments which require court review and approval. There are other medical treatments which may be considered controversial and/or highly intrusive or risky. Court review and approval of these consents may also be recommended.

   Judges can treat a petition for guardianship as a petition for conservatorship if the judge believes it is a less restrictive alternative. A judge may also treat a petition for guardianship or conservatorship as a petition for a protective order, or may decide that all of these are too restrictive of the person's rights.

4. Conservatorship: At a conservatorship hearing the court makes a finding of incapacity in specific areas where there has been clear and convincing evidence to support the finding and a preponderance of evidence that the person's property will be dissipated or wasted without a conservator. The person appointed is called the *conservator*, and the person under the conservatorship is called the *protected person.*

   Conservatorship is tailored to transfer financial decision-making power to the conservator only in the areas of life where protection and supervision by a conservator has been proven necessary.

   A conservatorship does not assume, or *presume*, that the proposed protected person is incapacitated in all areas of his or her life. There is no evidence of, or finding of, general incompetence. The individual can still marry, make a will or vote (unless specified by the court that the individual is incapable of doing so).

5. How much power and authority does a Guardian or Conservator have? The law requires that in both guardianship and conservatorship the court can grant the guardian or the conservator limited power to exercise authority over the ward or protected person. The guardian or conservator must use this authority only as is necessary to provide needed care and services. It cannot be used in a manner which limits the ward or protected person's civil rights and restricts his or her personal freedoms. This is to make sure that the decision of a guardian or conservator will not be overly protective or restrictive of the person's rights.

6. What types of Guardianships or Conservatorships are there? An adult who may need a guardian for personal decisions, such as where to live, would have a guardian of the *person*. An adult who may need a conservator for financial matters only would have a conservator of the *estate*. A guardian of the person and a conservator the estate may also be necessary.

   a. Guardianship of the Person: "A guardian of the person" is appointed for personal matters.

      A guardian of the person makes decisions regarding:

      - general care and needs, and where to live,

- care, comfort and maintenance (food, clothing, shelter, health care, social and recreational, training, education, habilitation or rehabilitation),
- taking reasonable care of personal effects,
- giving necessary consent for medical or other professional care, counsel, treatment, or service,
- approving or withholding approval of contracts, except for necessities, (this power is only given if there is no conservator of the estate) and
- exercising supervisory authority which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

b. Conservatorship of the estate: A conservator of the estate is appointed for financial matters.

A conservator of the estate must:

- pay reasonable charges for the support, maintenance, and education of the protected person from the protected person's estate, and in a manner suitable to the person's station in life and the value of the estate (the conservator must seek federal, state or local services that the protected person is entitled.),
- pay any just and lawful debts of the ward or protected person from the protected person's estate, possess and manage the estate, collect all debts and claims in favor of the person and invest all funds not currently needed as directed by statute,
- approving or withholding approval of contracts, except for necessities, and
- by approval of the court, sell, exchange, or purchase undivided interest in real estate.

c. Guardianship of the Person or Conservatorship of the Estate, or both: A guardian of the person and conservator of the estate would have all of the above powers and duties.

A guardian of the person, conservator of the estate, or both, has no duty or obligation to pay for any service for the ward or protected person from his or her own funds. Instead, the conservator uses funds from the protected person's estate or seeks out federal, state, or county services to which the protected person is entitled. [Minnesota Statutes section 524.5-417].

d. Emergency Guardianship of the person, Emergency Conservatorship of the estate, or both: Any person may petition the court to have an emergency guardian or conservator appointed. A petitioner should request a emergency guardianship or conservatorship only when it can clearly be shown that the person or the person's estate is in imminent harm or danger and the guardianship or conservatorship is immediately necessary for protection. Under these circumstances the petition for an emergency guardianship or conservatorship can be filed whether or not a petition for general guardianship or conservatorship has already been filed. The court will grant to an emergency guardian or conservator only those powers which are necessary to provide for the demonstrated needs of the ward or protected person.

The court will specify the duration, or length of time, of the emergency guardianship or conservatorship. Generally this cannot exceed 60 days, see Minnesota Statutes § 524.5-311, § 524.5-409. At the time the emergency guardianship or conservatorship ends, or upon the granting of letters of a general guardianship or conservatorship, the power of an emergency guardian or conservator will also end.

e. Public vs. private Guardianship or Conservatorship: A concerned and involved family member, close friend, interested party, corporation, professional guardian or conservator, or public agency may be appointed guardian or conservator for an incapacitated person. Generally, there is an order of priority for those who may be considered by the court for appointment. This will depend in part on the wishes, if any, of the proposed ward or protected person, and the availability of persons who will be willing and able to act as guardian or conservator.

1. *Public*. A public guardianship or conservatorship is any guardianship or conservatorship where the court appoints a state or county government agency to act as guardian or conservator.

   In a public guardianship or conservatorship a staff person within the state or local county agency is designated to act as the guardian or conservator. This designation is often referred to as a "delegation of power." This means that the powers of the guardianship or conservatorship are delegated, or passed down, to another person.

   Public guardianship/conservatorship is governed by Minnesota Statutes chapter 252A.

2. *Private*. A private guardianship or conservatorship is any guardianship or conservatorship where the court has appointed a private citizen, such as a family member, close friend, professional guardian or conservator, or a private agency to act as guardian or conservator. If a private agency is appointed, the agency will delegate the duties of the guardianship or conservatorship to an agency staff person.

CHAPTER III

III. LESS RESTRICTIVE ALTERNATIVES

A. ALTERNATIVES TO GUARDIANSHIP OR CONSERVATORSHIP: Independence, respect, and equality are values important to all people. These values help define the concepts of autonomy (independence and freedom) and self-determination (the right to make decisions for ones self). Because these rights are so valued in our society the least restrictive alternative must always be sought before taking away, or *amending*, a person's civil and legal rights to make decisions.

1. Why not Guardianship or Conservatorship? The right to autonomy and self-determination should allow us to make our own decisions. It should also allow us to make decisions that others may think are "wrong." Guardianship or conservatorship should not be required or used simply because a person makes a decision that other people do not understand or agree with, or because the person has a certain disability or diagnosis. The court and the guardian or conservator must try to strike a balance between helping adults to decide for themselves, and restricting some of the areas where they are in need of decision making assistance.

2. What does Least Restrictive Alternative mean? A least restrictive alternative is an option which allows a person to keep as much autonomy and self-determination as possible while still protecting the person. If a less restrictive alternative can provide proper protection for the person, it must be used to avoid guardianship or conservatorship. Some examples include, but aren't limited to: protective orders, representative payee for certain government benefits, establishment of a trust, joint bank accounts, or advance directives for health care.

3. Can Less Restrictive Alternatives be planned ahead? There are a variety of formal and informal methods, or tools, available to assure that a person's own wishes and decisions about the future are followed. No adult is too young or healthy to plan for incapacity. Even when a plan has not been established for meeting the future needs of a person whose capacity is in question, less restrictive alternatives to guardianship or conservatorship can and need to be considered by those who care for, or about, the individual. Some people may have difficulty talking about these matters. People who may be facing incapacity are often relieved to learn that there are ways for them to retain some control over their lives, or at least ensure their wishes will be followed.

4. What alternative planning tools are available? The alternative tools include voluntary, where the incapacitated person agrees to the arrangement; or involuntary, where another person makes the arrangements on behalf of the person with the incapacity. Both the voluntary and involuntary planning tools discussed on the following pages are less restrictive alternatives to guardianship or conservatorship. Once they are in place, a guardianship or conservatorship may not be needed at all. The best choice of alternatives depends on individual needs and preferences.

5. How are the tools used or written? It is wise to thoroughly understand a tool before trying to use it. The descriptions below provide a general summary of the tools. If additional information is needed there are resources listed in the back of this handbook, or consulting with an attorney may be appropriate.

B. VOLUNTARY ALTERNATIVES FOR PERSONAL NEEDS

1. Health Care Declaration (Living Will): The Adult Health Care Declarations Act went into effect August 1, 1989. It has gone through changes over the years and is now in Minnesota Statutes section 145C. Only a competent adult may write a health care declaration, or Living Will. This document gives the *declarant's* (the person making the living will) the power to do the following:
    - To provide health care professionals instructions regarding your desires and wishes for health care, e.g., "pull the plug", "do not pull the plug" etc.
    - To name an agent to make your health care decisions for you.
    - To both name an agent AND provide instructions for the agent and health care providers regarding your desires and wishes for health care.
    - To declare whether you want to be an organ donor and under what circumstances.
    - To provide your burial/funeral instructions, or name the person responsible for making such decisions.

2. Advance psychiatric directive: An Advance Psychiatric Directive can be written by a competent adult with mental health issues whose illness may intensify and worsen, leaving the individual unable to reasonably participate in decision making. The individual (the declarant) names another person (the proxy) to make decisions on behalf of the declarant regarding intrusive mental health treatment when the declarant is incapacitated by the mental illness.

    The directive addresses the giving and using of Neuroleptic medications or Electro-convulsive therapy (ECT) when the declarant is incapacitated and admitted (voluntarily or through the commitment process) to a treatment facility. The directive provides for full or limited consent, or refusal to consent, to treatment by the proxy. The declaration may be revoked completely or partially at any time if the person is competent at the time of the revocations. See Minnesota Statutes 253B.03, subd. 6b and subd. 6d.

3. Individual's plan: In the case of the individual who is losing the ability to safely care for him or herself in the current living environment, and who did not complete one of the planning tools described above while competent, that person's own plan could meet the needs and avoid guardianship or conservatorship. The individual may come up with the plan, or may be directed towards acceptance of a plan formulated with the help of formal or informal supports. This could include hiring home health care and other supportive services, moving to an assisted living or other supervised environment, or moving to a long term care facility.

4. Family's plan: Guardianship or Conservatorship of an adult whose capacity is in question may be avoided in situations where family members or other informal support networks are available, willing, and appropriate to make a plan of care and to follow through with meeting the needs of the individual. However, the best of plans are useless if the individual is unwilling to accept the assistance of family members and the services they arrange.

5. Case manager's plan: A social services case manager, hired by the individual, family, or the fiduciary can plan, implement, and coordinate a home care plan. This is appropriate when the individual is able to cooperate and willing to accept the recommended services, but not necessarily able to carry out and oversee the plan him or herself.

6. Health care facility plan: As part of the care team, and in addition to the involvement of any friends or family members, the health care facility social workers, nurses, activities directors, and others can help meet the ongoing personal care needs of the nursing home resident whose capacity is questioned. With the establishment of a nursing home trust fund, the social worker or other staff may be able to meet the individual's need for clothing and other personal items.

C. VOLUNTARY ALTERNATIVES FOR FINANCIAL NEEDS: Because of the complexities of various financial arrangements it is strongly recommended that an attorney who practices in the area of guardianship and conservatorship be involved in the development of any financial plan.

1. Banking options: There are some simple banking options which in some cases could be used as alternatives to guardianship or conservatorship. A person can often retain control of his or her own affairs with the help of modern banking technology such as: automatic recurring payments to creditors (utilities, mortgages, and others can be routinely paid in this hassle-free manner), banking by mail, phone or online, and specially designed devices for the visually impaired and physically disabled. Direct deposit can be arranged for Social Security and certain other pension and benefit checks.

   All of these may be useful and appropriate for the person who agrees to enter into such arrangements. The person should have the ability to understand what is being done each month. As this would not work for persons who would fear that their Social Security checks which no longer arrive in the mail have been stolen, or who may become confused and pay utility bills a second time.

   Another method often used is joint bank accounts where a trusted friend or family member's name is added to the account. Great caution should be taken, however, as the other person could legally withdraw all the money. There could also be tax problems for either party, as well as complications in eligibility for Medical Assistance. There is also right of survivorship, which may not have been intended.

2. Power of Attorney (POA): This Power of Attorney refers only to powers over finances. A power of attorney is a document, signed voluntarily by a competent adult (the principal) authorizing another person (the attorney-in-fact) to act on behalf of the principal. An attorney should be involved in the development and execution of such a document.

   A power of attorney can be a general document used for all authorized transactions and affairs related to property owned by the principal. It can also be as limited as a card signed at one bank, which only covers transactions at that bank. In addition to being detailed about what authority is and is not given, the document should also specify how long it lasts.

   A power of attorney is revocable by a competent principal at any time; the revocation must be in writing, and any third party who might be relying on the Power of Attorney should be given notice of the revocation. Once a person is incapacitated, the Durable Power of Attorney cannot be terminated (unless it includes a time limit), except if terminated by a guardian or conservator.

   Authority to exercise the Power of Attorney can be continued after the principal becomes incapacitated if special language is included in the document. This is called a Durable Power of Attorney. Be careful not to confuse this with the Health Care Directive (which is sometimes referred to as a Durable Power of Attorney for Health Care).

   The drawback of a power of attorney is that a court does not supervise it and there are no requirements of surety, bonds, or an annual accounting, and therefore could pose significant risk to the principal. The principal could be extremely vulnerable to the theft of funds by the attorney-in-fact; therefore, this should only be used when the attorney-in-fact is trustworthy of such a responsibility.

   However, if carefully drafted by an attorney who has a good understanding of the principal's needs and wishes, a power of attorney can be set up to include many safeguards. There are

statutory provisions which allow the principal to ask for an accounting at any time, and at execution of the document, it could be required that regular accountings be rendered to some designated individual.

3. Trusts: Trusts are another way of planning ahead for property-related matters. A trust is a legal plan for placing funds and other assets in the control of a trustee for the benefit of an individual (the grantor). Trusts are most useful in situations involving large assets, as the administration fees of trusts are often costly. Trusts can be set up to be revocable or irrevocable. An attorney knowledgeable in the trust area should be consulted to explain all options.

   Trusts can designate one or more persons, an organization, or a bank, to act as trustee. It can be set up to serve a wide variety of purposes, such as paying bills, managing investments, and managing real estate. A trustee provides a financial plan to protect the assets of an individual.

   a. *Living Trust*. A living trust is established by the person who owns the assets (the grantor), directing the trustee to manage the grantor's property for the grantor's benefit.

   b. *Standby Trust*. For planning ahead, it is possible to create a standby trust. In a standby trust the grantor creates an unfunded trust and enforces a Durable Power of Attorney. This durable power of attorney will direct that in the event of medically certified incapacity the grantor's assets are to be transferred to the trust and managed according to the terms of the trust agreement.

   c. *Supplemental Needs Trust*. The purpose of a supplemental needs trust is to provide for the reasonable living expenses and other basic needs of a person with a disability, when benefits from publicly funded benefit programs are not sufficient to adequately provide for those needs. It does not include trusts funded by the client, the client's spouse, or anyone obligated to pay damages for the individual. Also, the trust cannot be created for the benefit of the individual under a settlement agreement or judgment.

4. Social Security representative payee: This alternative can be voluntary on the part of a Social Security beneficiary, and it can also be used without the beneficiary's consent in some cases. This is discussed in the following section on non-voluntary, less restrictive alternatives.

D. NON-VOLUNTARY ALTERNATIVES FOR FINANCIAL NEEDS:

1. Social Security representative payee: Unlike the voluntary alternatives to guardianship or conservatorship, a representative payeeship for Social Security benefits, which includes Supplemental Security Income (SSI) benefits, can be set up after the person becomes incapacitated through the Social Security Administration (SSA). Representative payeeship might be an appropriate alternative to guardianship or conservatorship if Social Security is the only income and there is no need to protect other assets. Contact your local Social Security representative for their current policies on representative payees.

2. Arrangements for veterans and railroad retirement benefits: For persons receiving either Railroad Retirement Benefits or Veterans Benefits, substitute payment arrangements much like Social Security Representative Payeeships may be established if the beneficiary is found to be incapacitated through the process established by each respective administration.

   The Veterans Administration or the Railroad Retirement Board should be contacted for details and procedures to follow. As with Social Security Representative Payeeship, the appropriateness of such arrangements should be carefully considered given individual circumstances.

3. Management of state general assistance benefits: General Assistance benefits may be vendor-paid (for example, rent paid directly to the building manager) if the recipient is unable to manage the grant for his or her own benefit. Such arrangements are made by the county human service agency that administers the grant.

E. CONSERVATORSHIP PLANNING: Minnesota Statutes section 524.5-303(a) and section 403 provides a way for a person to plan ahead for a time when he or she may need a guardian or conservator. In a written document, witnessed in the same way as a health care directive, a person may name the guardian/conservator he or she wants, and may give specific instructions for the person.

For example, the conservator could be instructed on how to manage the person's property, where the person would like to live, and the person's wishes regarding health care. If the person later becomes incapacitated or for some other reason needs a guardian/conservator, the court must name the chosen person, and must order that the person's instructions be followed, unless the court finds that this would not be in the person's best interests. Evidence of a serious problem with the guardianship/conservatorship plan would have to be presented before the court would refuse to allow it.

While it is safer to plan ahead, this provision can even be used at the time of filing a petition for guardianship/conservatorship, as long as the proposed ward/protected person has sufficient capacity to form an intelligent preference.

Example 1: Ms. Smith is in frail health and has become very forgetful. She knows that she needs someone to assist her with bill paying and asset management. She has a close friend, Mary, whom she trusts and who agrees to take the responsibility of becoming conservator of the estate of Ms. Smith. Ms. Smith can file a voluntary petition naming Mary as her conservator, and giving specific instructions and limits on Mary's powers. The court will hold a hearing and will appoint Mary and give instructions unless the court finds that this would not be in the best interest of Ms. Smith.

Example 2: Ms. Smith's son Tom files a petition to be named guardian of Ms. Smith, but she prefers that her friend Mary be appointed. Ms. Smith can file a petition with the court asking that Mary be appointed instead of Tom. If the court finds Ms. Smith has the capacity to form an intelligent preference, it must appoint Mary instead of Tom, even though Tom is a blood relative, unless the court finds that appointing Mary would not be in Ms. Smith's best interest.

Example 3: Ms. Smith is healthy but wants to plan ahead in case she should need a guardian/conservator at some time in the future. She can execute her conservatorship plan, perhaps in conjunction with her Durable Power of Attorney for Health Care or Trust, and if guardian/conservator ever becomes necessary, the person she chose can bring the document to the probate court and petition for guardian/conservator.

A guardian/conservator plan, also referred to as a self-petition for guardian/conservator, is obviously the least restrictive way of obtaining a guardian/conservator. It should be offered to anyone who is a proposed ward/protected person and has sufficient capacity to form an intelligent preference. If the proposed ward/protected person's capacity is questionable, it is a good idea to have another person, such as the proposed guardian/conservator or a family member, sign the petition as a co-petitioner.

F. OTHER PROTECTIVE ORDERS: Minnesota Statutes section 524.5-412, provides that the court, instead of appointing a guardian or conservator, may after a hearing, authorize, direct, or approve:

1. any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person, or

2. any contract, trust, or other transaction relating to the protected person's financial affairs or involving his or her estate, if the court determines that the transaction is in the best interests of

the protected person.

The court will consider the interests of creditors and dependents of the protected person, and in view of the disability, whether the person needs the continuing protection of a guardian or conservator.

The court may appoint an agent, with or without bond, to assist in the accomplishment of any protective arrangement or other authorized transaction. The agent will have only the authority granted by the court and will be discharged after reporting to the court all matters relating to the order of appointment.

G. <u>ARC NATIONAL POSITION ON GUARDIANSHIP/CONSERVATORSHIP</u>: While this position paper was specifically written in regard to the use of guardianship or conservatorship for persons with mental retardation its principles should be considered before pursuing guardianship or conservatorship for any person, regardless of diagnosis.

The majority of persons with mental retardation can manage their own affairs with informal assistance and guidance from family, friends, citizens, and service agency support personnel. The appointment of a guardian or conservator is a serious matter involving the limitation of a person's independence and rights. When guardianship or conservatorship is appropriate, it should be sparingly used and adequately monitored by the legal system and advocates to insure that the best interests of the individual are protected.

Appointment of a guardian or conservator should be made only to the extent necessary for the protection and welfare of the individual and not for the convenience of the family, the service system, or society.

Less restrictive alternatives to full guardianship or conservatorship should always be considered first.

Since guardianship and conservatorship represents a transfer of the responsibility for exercising an individual's rights, adequate safeguards are needed to assure the individual retains as much decision-making power as possible.

The restrictions on the individual's rights and decision-making powers should be confined to those areas in which the individual clearly cannot understand the serious consequence of his or her decisions or lack of foresight, such as through the use of limited conservatorship, power of attorney, etc.

The guardian or conservator, preferably a family member, should be someone who is committed to the well-being of the individual, knows and understands the individual's needs and wishes and acts in accordance with them whenever possible.

The guardian or conservator should become knowledgeable of services, supports and systems that could impact significantly on the life of the individual.

The guardian or conservator shall be accountable for his or her actions and those actions reviewed periodically.

IV. ASSESSING THE NEED FOR LEGAL REPRESENTATION

A. DETERMINING IF GUARDIANSHIP OR CONSERVATORSHIP IS NECESSARY: The need for a legal guardian or conservator may arise for many reasons. This often includes the interest of a third party, such as a lawyer or a physician, who requires "informed" consent when there is a belief that the adult is "incapable" of giving it. It is important to understand that there are many care-giving relationships which exist without legal recognition.

Family members often take on informal decision making roles for each other before a person becomes incapacitated. A common example would be an adult son who assists his elderly father with personal care or financial matters as part of their ongoing relationship. If, however, the father's mental "capacity" is called into question, e.g. due to Alzheimer's, or other diseases affecting the fathers decision making ability, a court order appointing the son as guardian or conservator may be needed to legally allow him to make decisions on behalf of his father. Other times the need for a guardian or conservator may come about very quickly as a result, for example, of a severe head injury from an accident.

1. What type of people need Guardians or Conservators? Those who may be thought to be in need of a guardian or conservator include many different types of people such as:

   - a person with a developmental disability;
   - a person who is mentally ill;
   - a person who has experienced a stroke or a head injury which may have resulted in a mental or physical disability;
   - a person who has a disease such as Alzheimer's; or who may be having diminished decision-making capacity.

   It is important to recognize that although a person may fit into one of these categories, this does not mean that he or she is necessarily *incapacitated* and in need of a guardian or conservator. A person's need for decision making support or for a decision maker will vary and depend on his or her ability to make reasonable decisions. The availability of formal and informal support from family or friends or other resources, and adequate planning to assure that his or her needs are met. Guardianship or conservatorship and the need for support in decision-making have to be assessed for each person individually.

2. What is the criterion for establishing a Guardianship or Conservatorship? The criteria for establishing a guardianship or conservatorship is based on the court making a finding that:

   a. the person is incapacitated,
   b. that the person needs the supervision and protection of a guardian or conservator,
   c. that there is no appropriate alternative which exists which is less restrictive of the person's civil rights and liberties, and,
   d. that the person chosen to act as guardian or conservator is in the best interests of the proposed ward or protected person.

3. How is incapacity determined? Determining incapacity requires assessing three factors: Impairment, Functional Capacity, and Decisional Capacity.

   a. *Impairment*. *Impairment* generally refers to a person's diagnosed disability or medical condition which may affect the person's decision-making skills. There is no statutory, or legal, definition of impairment, but it generally relates to a person's functional incapacity.

b. *Functional Capacity*. *Functional capacity* means a person's ability to take action to meet personal needs, or demonstrated behavior which indicates he or she can take appropriate or necessary action to have needs met. It must be determined whether and how well the individual can perform activities to meet personal needs and how much assistance is needed with decision making.

c. *Decisional Capacity*. *Decisional capacity* means a person's ability to understand, make, and communicate responsible personal decisions to make sure his or her needs are met. This is similar to informed consent evaluations:

- Is the person aware of an unmet need or inability in managing personal needs?
- Is the person aware of alternatives available to meet these needs?
- Is the person able to express a choice?
- Does the person understand and appreciate the choice made, and the risks and the benefits?

4. What assessments should be completed and who should complete them? In order to determine if a person is incapacitated, that person's skills and abilities to make and carry out decisions to meet his or her needs must be assessed in some way. Assessments should be multi-disciplinary, personalized, and comprehensive. Every attempt must be made to ensure that assessments are sensitive to the language, religion, gender, and cultural differences of the person being assessed, and they should involve, as much as possible, family and close friends of the adult.

The assessments should not focus solely on a person's cognitive abilities (such as I.Q.) but on the decisions to be made and the person's ability to understand what is required. A diagnosis of mental retardation or mental illness may not indicate the need for a guardianship or conservatorship, nor does dependency. Instead, look for how that person copes with living. It must also be recognized that at present, the procedures and standards for determining "competency" are uncertain and controversial.

a. *Medical*. A medical assessment must be completed by a physician or medical specialist. This should include the person's diagnoses, a list of any medications which may affect decision making skills and abilities, and the results of testing to determine if there are treatable causes of the person's impairment.

b. *Behavioral*. A behavioral assessment should be completed by a psychologist, care provider, or behavior specialist. This should include an assessment of any behaviors and necessary interventions which may affect the person's decision-making skills and abilities.

c. *Activities of Daily Living*. An assessment of activities of daily living, such as getting dressed, cooking, personal hygiene care, household cleaning, budgeting money, paying bills, etc., should be completed by a care provider, social services provider, occupational therapist, or physical therapist. This should include an assessment of functional capacity to act on decisions to assure personal and financial needs are met.

d. *Social History*. A social history should be completed by the person, his or her family, and a social services provider. This should include: a background of the person, what led to incapacity, what does the proposed ward or protected person and the family, if appropriate, think of guardianship or conservatorship, and the person's past and present decision-making skills.

e. *Intelligence*. An intelligence test may be completed by a psychologist or psychiatrist. This should include an assessment of decisional capacity to understand decisions that need to be made to meet personal and financial needs.

V. WHO MAY ACT AS GUARDIAN OR CONSERVATOR

A. HOW GUARDIANS AND CONSERVATORS ARE CHOSEN: Any competent person may be appointed as the guardian or conservator for a person who is incapacitated. Such a person may be the spouse, an adult child or parent of the proposed ward or protected person, a person who has lived with the ward or protected person for a period of six months or more, an adult related by blood, adoption, or marriage, or any other adult or professional guardian. Before being appointed as the guardian or conservator, the court may request various background information from the individual.

The law requires that the court ask what the incapacitated adult's wishes are for the choice of his or her guardian or conservator. Whenever possible the court will ask the adult who he or she would like appointed as guardian or conservator. The law states that in selecting a guardian or conservator, the primary concern is the interest of the incapacitated adult, over and above those of the family or kin. The court may consider a proposed guardian's or conservator's religious, cultural, racial and ethnic background when determining suitability.

Here are some, but not all, of the relevant factors considered or evaluated when nominating a guardian or conservator:

- Does the person have a sufficient understanding or mental ability to express a preference of who is appointed as guardian or conservator?
- Is there regular and appropriate interaction between the person and the proposed guardian or conservator?
- Is there interest and commitment of the proposed guardian or conservator in advocating for the welfare and rights of the person?
- Does the proposed guardian or conservator maintain a current understanding of the person's needs in all areas of the person's life?
- Relationship is not a conclusive factor in determining the best interests of the person, but should be considered to the extent that it is relevant to the other factors mentioned here.

1. Can more than one Guardian or Conservator be appointed? Co-guardians or conservators can be appointed. There is no statutory limit on the number of guardians or conservators who may be appointed for a person. For practical purposes and ease in decision-making it is recommended that no more than two co-guardians or conservators be appointed. When co-guardians or conservators are appointed both signatures are required for written consent and this requires agreement with all decisions.

2. Must the Guardian/Conservator and Ward/Protected Person live in the same city or state? There are no residency requirements for a guardian or conservator, but he or she should be able to maintain a current understanding of the ward's or protected person's physical and mental status and needs. Also be available to carry out all of the powers and duties granted to him or her by the court.

   For example, a person in need of a guardian or conservator may live in Minneapolis, Minnesota, with a brother in Chicago, Illinois, who is willing to act as a guardian or conservator. In such a situation the brother should not be prevented from becoming a guardian or conservator solely on the basis of his residency if he is otherwise able to carry out his powers and duties. This may be a

situation where co-guardians or conservators would work well, one may reside out of town and the other nearby.

3. Can a person's service provider be appointed guardian or conservator? Minnesota State section 524.5-309(c) provides:

> (c) Any individual or agency which provides residence, custodial care, medical care, employment training or other care or services for which they receive a fee may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.

Minnesota Statutes section 245A, The Human Services Licensing Act, also prevents guardians or conservators from being licensed service providers (the person who is the actual license holder for the service) for the same person.

Some questions to be considered before proceeding with a petition are:

- What is the history of the relationships between the proposed ward or protected person, the employee/guardian or conservator, and the employer/service provider? Is there anything about these current or past relationships to indicate the proposed ward's or protected person's best interests won't be met in this situation?

- What is the employee's ability to act independently as the guardian or conservator when making decisions about the services the ward or protected person receives from the guardian's or conservator's employer?

- What assurances or protections for the ward or protected person regarding service provision decisions will be included as part of this type of guardianship or conservatorship? Is there any reason to believe such protections won't be effective?

- Are there no less restrictive alternatives for a guardian or conservator who is willing and able to act in the person's best interest?

4. Criminal Background Checks for Proposed Guardians and Conservators

A NEW LAW EFFECTIVE AUGUST 1, 2001, REQUIRES BACKGROUND CHECKS OF PROPOSED GUARDIANS AND CONSERVATORS. ONE BACKGROUND CHECK WILL BE GOOD FOR ALL APPOINTMENTS WITHIN A FIVE-YEAR PERIOD.

A completed background check consent form and a check for the applicable fee payable to Department of Human Services Licensing must be submitted to the Department of Human Services for the background check. The background check must be completed before a court issues a final order appointing a guardian or conservator on a case. If the proposed guardian or conservator has not been a resident of Minnesota for at least five years, an additional fee must be submitted to the Department of Human Services with fingerprint cards as part of the background check request. Both the background check form and fingerprint cards are available from Court Administration.

If the guardian or conservator is not an individual, the law specifies that the background study must be done on all individuals employed by the proposed guardian or conservator who will be responsible for exercising duties under the conservatorship or guardianship.

Background studies are **not required** if the proposed guardian or conservator is:

1) a state agency or county;
2) a parent or guardian of a proposed ward or protected person who has mental retardation or a related condition, if the parent or guardian has raised the proposed ward or protected person

in the family home until the time the petition is filed, unless counsel appointed for the proposed ward or protected person requests the study; or

3) a bank with trust powers, bank and trust company, or trust company.

After the background check is completed, the Department of Human Services will return the results to the court. Background checks filed with the courts will be considered confidential and access will be limited to only the proposed guardian, conservator or their attorney.

If the proposed guardian or conservator feels the record check contains incorrect information, they must contact the Bureau of Criminal Apprehension (BCA) or the Department of Human Services (DHS) directly.

CHAPTER VI

VI. POWERS, DUTIES, AND RESPONSIBILITIES

A. ON-GOING RESPONSIBILITIES OF GUARDIANS & CONSERVATORS: According to the guardianship/conservatorship statute, Minnesota Statutes section 524.5-111, a guardian or conservator shall be subject to the jurisdiction of the court at all times and in all things. In this sense the guardian or conservator acts as an agent, or representative, of the court. Despite the possibility of being given very broad powers, the guardian or conservator is accountable to the court in decisions made on behalf of the ward or protected person. A guardian's or conservator's actions are subject to review and direction by the court.

Overall, the ongoing responsibilities of the guardian or conservator include:

- To carry out duties and responsibilities granted to them by the court.

- To abide by any restrictions, either by statute or court order, placed on their powers. For example, conservators of the estate are not allowed to sell personal property or sell real estate without notice to the protected person. Guardians of the person are not allowed to consent to sterilization, psychosurgery, electroshock, experimental procedures, or any other medical procedure which violates known conscientious, religious, or moral beliefs of the ward without prior order from the court.

- To maintain a current understanding of the needs of the ward or protected person. This includes maintaining current knowledge of the ward's or protected person's diagnosis, prognosis, treatments, care plan and needs through regular and frequent visits with the ward or protected person as well as frequent contacts with care providers.

- To seek out services and benefits/entitlements which the ward or protected person may need or is eligible for, and ensure that the ward or protected person receives all services and benefits/entitlements to which he or she is entitled.

- The ward or protected person, and interested persons of record with the court, are to be notified annually in writing of the right to have the guardianship or conservatorship modified or terminated, or request other appropriate relief.

The guardian or conservator must be aware at all times that the only authority he or she has over the ward or protected person is what has been granted by the court, and no more. Respect for the rights maintained by the ward or protected person must remain a primary concern of the guardian or conservator in all matters and in all decisions. The guardian or conservator must exercise his or her powers in a way which allows the ward or protected person as much independence as possible.

1. What if the Guardian or Conservator will be temporarily unavailable to act? Minnesota Statutes section 524.5-211 allows a parent to delegate responsibilities. A parent or a guardian of a minor or incapacitated person may delegate to another person any powers regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption of a minor ward. This is done with a properly executed power of attorney and is for a period not exceeding twelve months. A parent of a minor child may delegate those powers for a period not exceeding one year by a designated caregiver agreement under chapter 257A.

2. Does the Guardian and Conservator act as an advocate?: An advocate is a person who speaks in favor of something, someone who makes recommendations. An advocate argues for a cause, defends beliefs, or supports a position. An advocate does these things on behalf of another person.

   An interested person does not necessarily have to be appointed guardian or conservator to help a vulnerable adult. A number of adults need some help in making decisions. Some have family or friends to help them. There are laws to protect those who cannot protect themselves, but often these laws do not work unless there is an individual who takes a personal interest in a vulnerable adult's welfare - an individual who acts as an advocate. Upon appointment the guardian or conservator assumes the role of advocate.

3. How does a Guardian or Conservator advocate effectively? The guardian or conservator is appointed to make decisions which will be in the best interest of the ward or protected person and which will protect that person's civil and legal rights and personal freedoms. In order to fulfill his or her duties the guardian or conservator must become familiar with the ward's or protected person's needs, beliefs and preferences. The guardian or conservator must then make a choice that reflects those beliefs, needs, and preferences. To do this, the guardian or conservator must become informed about what services the ward or protected person is entitled to and which services will meet his or her needs. Actively participating in the person's life is the most meaningful way to obtain the information required to make decisions for another person.

   It is not necessary for a guardian or conservator to know every law, right, entitlement, or service that may affect the ward or protected person. There are advocacy organizations, and state and local agencies in the community which can provide information regarding various services and entitlements, how to access them, and to help in understanding and protecting the rights of the ward or protected person.

   It is often helpful to seek assistance from or to join an organization that provides information, advocacy, and support services that address the needs of the ward or protected person. Such organizations are usually a good source of support for family members or care givers.

B. POWERS AND DUTIES OF A GUARDIAN OF THE PERSON: The powers and duties of a guardian of the person are governed by Minnesota Statutes sections 252A.111 and 524.5-313. The guardian may have additional powers granted by the court.

1. Custody of the Ward and to establish the place of residence: The power to determine the ward's place of residence consistent with state and federal law, and the least restrictive environment consistent with the ward's best interest.

   The guardian can change the ward's place of residence. Additionally, any other interested person can petition the court to begin a change of residence. This option is available to offset potential abuses by the guardian. The guardian can change the ward's place of residence even if it is against the person's wishes only if the court does not object, or if no petition is filed which contests the move. The guardian must also notify the court of any changes of address.

   A guardian cannot relocate the ward out of state without court order granting permission. The ward may not be admitted to any regional treatment center, except after a commitment hearing in which the court orders the admission, for outpatient services, or for temporary care for a specific period of time not to exceed 90 days in any calendar year.

   Before making a decision to change a person's residence the guardian must consider:

   - Are the living arrangements appropriate and the least restrictive?

- Do the living arrangements reflect the ward's prior lifestyle and is the ward satisfied with the current living arrangements?

- Do the living arrangements meet the needs of the ward with the least amount of intrusion on the privacy and independence of the ward? Is it clean and safe? Are needed support services available? If the ward resides in a care facility, are there individual plans in place to assure that the ward's personal and medical needs will be met for activities of daily living, recreation? Are there plans in place, as appropriate, to move to a less restrictive setting?

2. Provide for care, comfort, and maintenance needs: The duty to assure that provision has been made for the ward's care, comfort, maintenance needs, including food, 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 their own personal funds.

   Whenever possible or appropriate, the guardian should meet these needs through governmental benefits or services to which the guardian is entitled or eligible, rather than the ward's estate. Failure to satisfy the needs and requirements of this clause is grounds for removal of the guardian, but the guardian does not have any personal or financial liability.

   In order to perform this duty the guardian must carry out the following functions:

   - The guardian has meaningful visits with the ward and at least one other communication with a care professional or interested party, at least once a month, or as often as necessary to assure the ward's well-being and to determine the ward's status.

   - The guardian keeps a written summary of visits and other communication related to the guardianship. The guardian keeps records regarding the ward. The guardian is available for routine and emergency communications.

   - The guardian promotes the care, comfort, and maintenance of the ward. The ward's attitude towards his or her current situation is known. The guardian is aware of what was the ward's basic, original physical appearance, and psychological and emotional state.

   - The guardian knows the condition of the ward's personal items.

   - The guardian knows the religious faith and church affiliation of the ward and helps to maintain that participation as desired.

3. Take reasonable care of personal effects: The duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a conservator of the estate.

   Personal property should be appraised and secured. *Reasonable care* must be taken with the property. Depriving the ward of the use of the personal belongings must be balanced against the possibility of the items disappearing by gift, theft, or otherwise. Family pictures, items of sentimental or religious value, and items of personal property may be stored.

   The guardian must complete and file a notice of *Intent to Dispose* in the manner required in Minnesota Statutes section 524.5-313, prior to the disposition or sale of the ward's personal effects. The notice must inform the ward of the right to object to the disposition of the property within ten days and to petition the court for review of the guardian's proposed actions. The notice of objection must be served on the guardian by mail or in person, unless the person filing the objection is the

ward. Once the guardian is served with notice of an objection, the property may not be disposed of unless the court approves of the disposition after a hearing.

4. Consent to medical or other professional care: The power to give necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment, or service. The guardian will not consent to any medical care for the ward which violates the known conscientious, religious, or moral belief of the ward. No guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court. The guardian must exercise informed consent in decision making.

5. Contracts: If there is no conservator of the estate, the power to approve or withhold approval of any contract the ward makes, except for necessities.

6. Supervisory authority: The duty and power to exercise supervisory authority over the ward in a manner that limits the person's civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

7. What are the annual duties of the Guardian of the person?

   a. Annual report of well-being: In private guardianship cases, under Minnesota Statutes section 524.5-316, the guardian must file with the court an annual report of personal well-being, within 30 days of the anniversary date of the appointment of the guardian. The report must contain the guardian's good faith evaluation of the following information for the previous year:

      - Changes in the medical condition of the ward.
      - Changes in the living conditions of the ward.
      - Changes in the mental and emotional condition of the ward.
      - A listing of hospitalizations of the ward.
      - If the ward is institutionalized, an evaluation of the care and treatment received by the ward.
      - Restrictions placed on the ward's rights to communicate and visit with persons of the ward's choice.

      This report should describe the personal and non-financial status of the ward, contain updates regarding any changes in the guardian's status and capacity to serve as a guardian, and include any reimbursements for services rendered in the past year that were not reimbursed by county contract. The court or its designee will review the court file each year to ensure that the report has been filed and that it contains the required information stated above. If the report has not been filed within 60 days of the required date or if the report does not include the information required, the court shall issue an order to show cause.

      A copy of the personal well-being report must be provided to the ward and to interested persons of record with the court.

      NOTE: A public guardianship is one in which the individual is a ward of the state, under the supervision of the Commissioner of Human Services. In public guardianship cases, there is no requirement to file an annual well-being report with the court. Rather, under Minnesota Statutes section 252A.16, the Commissioner of Human Services is responsible for conducting an annual review of the physical, mental, and social adjustment and progress of every ward.

b. Annual notice of rights: The Annual Notice of Right to Petition must be filled out by the guardian and sent to the ward and to interested persons of record with the court within 30 days after the anniversary date of appointment of the guardian. This notice informs the ward that he or she has a right to end or modify the guardianship.

C. POWERS AND DUTIES OF A CONSERVATOR OF THE ESTATE: In order to effectively carry out the responsibilities as conservator of the estate, careful record keeping is necessary for annual accounting purposes. Also, the conservator must establish a separate protected person account to disburse and deposit money, and should not co-mingle assets at any time. If the protected person's income is insufficient to meet his or her needs, the conservator may have to borrow money in the protected person's name on the protected person's behalf. Also sell some of the person's assets, and/or apply for the protected person to receive federal, state, or county financial or service resources. The conservator should not enter into any agreements to sell property or assets without first consulting his or her attorney.

A conservator of the estate has no duty or obligation to pay for any service for the protected person from the conservator's own funds. But rather seeks out federal, state, or county services to which the protected person is entitled. It is the responsibility of the conservator of the estate to manage and invest the protected person's assets for the benefit of the protected person.

1. Pay reasonable charges for support, maintenance, and education of the protected person: The conservator has the duty to pay reasonable charges on behalf of the protected person. Billings should issue in the name of the protected person, and all documents signed by the conservator on behalf of the protected person should indicate that relationship, to avoid incurring personal liability. This means that the conservator must first make sure that the service has been rendered, and that the charge is a reasonable one.

   The conservator must maintain an accurate record of services he or she has performed, the time spent, and the expenses incurred in performing duties as conservator. A conservator may charge a reasonable fee for the provision of necessary conservatorship services to the protected person.

   For a person residing at home reasonable charges might include: payment of mortgage, rent, insurance, taxes, utilities, maintenance of the home, needed in-home services of the person, medical, clothing, and other personal items.

   For a person residing in a facility, reasonable charges may include: reviewing the level of care assessment (case-mix) of the protected person to be sure the facility's charge is correct for the level of care required; ensuring that the protected person has sufficient funds on hand for personal spending, and reviewing and monitoring the medical and personal services provided.

2. Pay all just and lawful debts of the protected person, pay reasonable charges for support, maintenance, and education of the protected person's spouse and dependents: The conservator of the estate must pay all of the protected person's debts as they become due. The conservator is also responsible for filing income tax returns on behalf of the protected person. With a court determination of what is reasonable, the conservator must also pay support, maintenance, and educational expenses of the protected person's spouse and dependents.

3. Possess and manage the estate, collect all debts and claims: One of the conservator's first duties is to take control of (possess) the protected person's property. This involves conducting a comprehensive search for all assets the protected person owns, and arranging for transfer of title or possession to the conservatorship. The conservator shall investigate and determine all debts and claims in order to pursue collection. If there is a need to protect assets, the conservator may, with the consent of the court, institute lawsuits and act on behalf of the protected person. Also,

the conservator must invest all funds, preserving, protecting, and conserving assets and producing as much income as possible with minimal risk to the principle asset.

The best source of information of what the protected person owns may be the protected person. Review with the protected person the financial records, such as current bank and broker statements, income tax returns, account ledgers, deeds and insurance policies. The conservator has the right to enter the protected person's safe deposit box and remove the contents, upon presenting a certified copy of his or her Letters of Conservatorship to the financial institution. If the box is rented with another person, that other person should be present when the box is opened.

4. What are the Conservator's duties at the time of appointment? At the time of appointment the conservator of the estate must complete the following:

   - Prepare an inventory of all property; being sure to check for all bank accounts, stocks, bonds, and real estate in the protected person's name.
   - File a change of address with the post office to ensure all future mail is forwarded to the conservator to aid in locating assets (1099's issued at year end can often help locate additional assets). Personal mail, however, must be returned to the protected person unopened.
   - Take control of all property and assets, and make sure they are adequately protected against loss.
   - Keep thorough records.
   - Determine and collect all income.
   - Pay the protected person's debts as they become due.
   - Invest the property in investments suitable to the protected person's circumstances.
   - Determine whether or not the protected person must file and pay income taxes, and, determine whether real estate taxes are due.

5. How does a Conservator manage insurance? The conservator must consider the following when inspecting the protected person's insurance:

   a. *Real property insurance*. Is the property adequately insured/replacement value? Are the premiums current?

   b. *Household insurance*. Does the policy contain adequate coverage?

   c. *Health insurance*. Is the policy cost effective? Is there duplicate coverage with multiple policies? Is there Medicare A & B coverage?

   d. *Life insurance*. Locate any and all policies. Are premiums current? Is the insurance necessary?

6. How does a Conservator manage real estate? *Care and maintenance of real estate.* The conservator of the estate must arrange for the care and maintenance of the property such as, cutting grass, snow shoveling, trash removal, furnace inspection, or adequate heating fuel. When the conservator is appointed he or she must determine the following:

   - Who has access to the property? Should locks be changed?

- Is the property insured? Have the insurance premiums been paid?
- Are the real estate taxes current?
- Where is the abstract or certificate of title?

a. *Sale of real estate*. If the property the conservator wants to sell is the principal residence of the protected person, it must be determined that the protected person will be unable to return to independent living. Conservators should consult with their attorney on such matters. Keep in mind the following requirements:

- Property cannot be given away.
- Secure a doctor's statement to determine the protected person's physical health and whether or not the person is able to live independently or with assistance at home.
- Two disinterested persons who are appointed by the court must appraise the property.
- Petition the court for permission to sell. The court will choose an appraiser to appraise the property. Appraisals are completed after the hearing. The appraisal must be attached to the *Order Directing Sale*.
- Relatives may be given a chance to purchase at appraised value prior to the general public.
- Property cannot be sold for less than the appraised price without court approval. If the sale takes longer than six months, the property may have to be reappraised.
- Never give up the abstract without getting a receipt.
- Prior to closing, have the court issue an order directing sale, order confirming sale, and current Letters of Conservatorship. The conservator's deed must be prepared. Often the closing company wants to see these documents prior to closing.

7. Does the Conservator of the estate ever have to go to court? A conservator of the estate has the authority to complete most of these tasks, but some, such as the sale of real estate, require additional authorization from the court. The conservator should obtain competent legal and financial advice, particularly in the management of large asset situations, contested, or controversial situations.

8. What is the inventory? An inventory of all assets owned by the protected person at the time of the conservator's appointment must be filed with the court within 60 days of the appointment. The protected person may also be required to file appropriate accounting with an agency administering benefits. The inventory provides several pieces of information to the court:

- It serves as the initial listing of property for which the conservator will be held accountable.
- It assists the court in determining the sufficiency of the conservator's bond.
- It advises the court of the extent of the protected person's estate, and indirectly, of the income likely to be received for the protected person's support.

The inventory of the property includes:

- Real estate

- Furniture and household goods
- Wearing apparel
- Corporation stocks
- Bank Accounts, Certificates of Deposit, Receivables
- All other personal property

The conservator determines the fair market value of all assets listed in the inventory. If appraisers are appointed by the court, the value of assets will be determined by the court appointed appraisers. The conservator's attorney should assist in preparing the final draft of the inventory and filing it with the court. If the conservator fails to file an inventory, the court may issue a citation, and may remove him or her as conservator.

9. What are the Conservator's annual duties?

   a. Annual accounting and annual notice of rights: An annual account must be filed with the court which shows all receipts to and disbursements from the estate. The conservator must also give the protected person and interested persons of record with the court an Annual Notice of Rights to Petition within 30 days after the anniversary date of the conservator's appointment. This initial account should begin from the date of appointment, and will use the figure for the personal property listed on the inventory. Later accounts will start with the ending balance from the account of the previous year.

      No order settling or allowing an annual or final account shall be issued by the court without a hearing to approve the account and notice of the hearing provided to the protected person and interested persons. There must be a hearing on the final account at the death of the protected person or at the death of the conservator.

      A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the court or any interested party. A hearing shall be held for such purpose in each conservatorship of the estate at least once every five years upon proper notice.

10. What financial records is the Conservator responsible for keeping: The conservator is responsible for keeping accurate financial records at all times. In order to do this the following steps are recommended:

    - Establish a separate conservatorship bank account to receive and disburse all deposits and make all payments.
    - Maintain a complete and accurate ledger which shows all funds going through the conservatorship account.
    - Seek approval from the court before making large purchases. This court approval may be obtained *ex parte*, meaning without a hearing.

SAMPLE LETTER TO
BANK/SAVINGS & LOAN

Date

Your Address

Name of Bank
Address

RE: Conservatorship of (Name of protected person)

Dear Sir or Ms.:

Please be advised that I have been appointed as the Conservator of the Estate of the above named protected person. Enclosed is a certified copy of my letters of Conservatorship.

Please review your records to verify whether the above named protected person has any accounts or safe deposit boxes at any of the branches of your institution. If so, please inform me of the account and branch where the account(s) and or safe deposit box is/are located.

This is also to inform you that I hereby revoke any power of attorney or any signature authorization with respect to any of these accounts.

Also, please provide me with the information you will need to transfer the assets to a Conservatorship account. It is my understanding that all accounts in FSLIC and FDIC institutions may be withdrawn prior to maturity and no early withdrawal penalty may be imposed if a court of proper jurisdiction has declared that a person is no longer capable of managing his or her own estate affairs, and the account was issued before the date of such determination and not extended or renewed after that date. If these regulations do not apply to the accounts in your institution, please let me know.

Thank you for your assistance with this matter.

Sincerely,

Your Name
Conservator

SAMPLE LETTER TO
SECURITIES TRANSFER AGENT

Date

Your Address

Name of Company
Address

Attn: Stock Transfer Department

RE: Conservatorship of (Name of protected person)
Shares of Stock in (Name of Company)
Certificates No. (List All Numbers)

Dear Sir or Ms.:

Please be advised that I have been appointed as the Conservator of the Estate of the above named protected person. Enclosed is a certified copy of my letters of Conservatorship.

It appears the protected person owns the stock listed above. Please advise me of the number of shares now owned by the protected person, and whether these are held in Certificate Form or on account with your Company. Please make sure that the account title for the stock is changed to (Your Name), Conservator of (protected person's Name).

Also please make sure that all future dividend checks or issues of stock are made payable to the Conservatorship and mailed to me at the address above.

I would also appreciate it if you would inform me what requirements your Company has for transfer of the stock, should it become necessary for the Conservatorship to sell its holdings.

Thank you for your assistance with this matter.

Sincerely,

Your Name
Conservator

SAMPLE LETTER TO
INTERNAL REVENUE SERVICE & MINNESOTA DEPARTMENT OF REVENUE

Date

Your Address

Internal Revenue Service
Andover, MS 05501

or

Minnesota Dept. Of Revenue
Mail Station 4453
St. Paul, MN 55164

RE: Conservatorship of (Name of protected person)
Social Security No.

Dear Sir or Ms.:

Please be advised that I have been appointed as the Conservator of the Estate of the above named protected person. Enclosed is a certified copy of my letters of Conservatorship.

Please send all future correspondence concerning the protected person to me at the above address.

Also, please send me a copy of the last two income tax returns that were filed by the protected person, or a copy of any form necessary to obtain these returns.

Thank you for your assistance with this matter.

Sincerely,

Your Name
Conservator

SAMPLE LETTER TO
SOCIAL SECURITY/VETERAN'S ADMINISTRATION

Date

Your Address

Internal Revenue Service
Andover, MS 05501

or

Minnesota Dept. Of Revenue
Mail Station 4453
St. Paul, MN 55164

RE: Conservatorship of (Name of protected person)
Social Security No. _____ OR V.A. Claim No.

Dear Sir or Ms.:

Please be advised that I have been appointed as the Conservator of the Estate of the above named protected person. Enclosed is a certified copy of my letters of Conservatorship.

Please send all future benefit checks made to (Conservator's Name), Conservator of the Estate of (Name of protected person).

Thank you for your assistance with this matter.

Sincerely,

Your Name
Conservator

CHAPTER VII

VII. DECISION MAKING

A. STANDARDS AND PRINCIPLES OF DECISION MAKING: Guardians and conservators take on a very important task, to make decisions for another person. This can be a very rewarding activity. The guardian or conservator must be careful to act in the ward's or protected person's best interest and preferences.

A guardian or conservator needs to recognize that people have the right to make their own decisions. We all have an interest, for a number of reasons, in making our own decisions about our lives. When we are no longer legally able to do so the effect can be tremendous. The impact of no longer being able to control and enjoy one's property, for example, may be devastating for some people.

1. Are there criteria by which to make decisions? When making decisions the guardian or conservator must:

   - take actions and make decisions that encourage and allow the maximum level of independent, or self-reliant, functioning on the part of the ward or protected person,
   - safeguard the decision-making powers of the ward or protected person so that they are not restricted beyond a clearly established need, and
   - make decisions only to the extent necessary to provide needed care and services for the ward or protected person.

   To do this, the guardian or conservator must:

   - get to know the ward or protected person,
   - understand any needs or problems the ward or protected person may have, and
   - be able to ask questions and seek opinions about alternative ways to meet the needs of the ward or protected person.

   The guardian or conservator is bound by law to:

   - consider the ward's or protected person's reasonable wishes,
   - find the support services that will provide the care that the person requires, and
   - weigh and balance all of the potential benefits or risks to the person.

2. What are the standards of ethical decision making? Ethical substitute decision making assures:

   - That no less restrictive alternatives exist including the use of technological assistance.

- That the potential benefit and harm to the ward or protected person has been weighed.

- That the ward's or protected person's desires and preferences have been considered.

- That the ward or protected person is involved and included in community settings and activities whenever reasonably possible.

- That reasonable efforts have been made to obtain the opinions of the relatives and other involved persons.

Standards of ethical decision making are based on the following principles:

a. *Substituted judgment:* *Substituted judgment* means the guardian or conservator makes decisions for the ward or protected person based on how the ward or protected person would have decided if not incapacitated. This standard assumes competence of the ward or protected person prior to incapacity when the ward or protected person would have been able to express an informed choice.

   This requires that the guardian or conservator knew the person, or is able to find out this information by interviewing people who did know the ward or protected person, before the ward or protected person became incapacitated. The guardian or conservator must also review any written statements or other declarations made by the ward or protected person before the ward or protected person became incapacitated.

   A modified form of substituted judgment is codified in M.S. § 524.5-411 which allows the conservator to provide estate planning for the protected person. This can only be done with a hearing and court approval. All persons that may be affected by the estate planning must be given notice of the hearing. Estate planning is not proper if it deprives the protected person of assets that would otherwise be used or applied for the protected person's own benefit. For example, medical assistance planning that gifts all, or substantially all, of the protected person's assets away is per se improper because funds are being diverted away from the protected person. If there is more than enough funds to provide for the protected person's on-going care then excess funds might be properly gifted. Also, planning for transfers that take place only upon the protected person's death may be appropriate.

b. *Best interest:* If the ward or protected person has always been considered incapacitated then the guardian/conservator must make decisions that are in the ward's/protected person's best interest. *Best interest* has two parts:

   - The first part considers the *ward's or protected person's wishes*.

   - The second part considers the *benefits and harms to the ward or protected person* of a particular act or course of action based on reasonable alternatives, and selects a reasonable alternative that provides the most benefit and least harm.

   These decisions require the guardian or conservator to obtain enough knowledge of the ward or protected person in order to make decisions on the ward's or protected person's behalf that are in his or her best interest.

c. *Least restrictive alternative*: *Least restrictive alternative* means that the guardian or conservator must choose alternatives that are the least likely to interrupt, bother, or interfere with the desires, lifestyle, or preferences of the ward or protected person, and are the most likely alternatives other people in the community would choose if they didn't need a substitute

decision-maker, given the level of supervision and protection required for the ward or protected person.

Allowing least restrictive alternatives requires:

- The level of supervision and protection must allow "risk-taking" to the degree that there is no reasonable likelihood that serious harm will happen to the ward or protected person or to others.

- The guardian or conservator must participate in planning on behalf of the ward or protected person.

- The guardian or conservator must consider what services are available under state and federal law.

- The guardian or conservator must plan for the individual needs of the ward or protected person and assist and represent the ward or protected person.

It is the guardian's and conservator's responsibility to determine that services for the ward or protected person are being provided in the least restrictive manner.

d. *Informed consent*: *Informed consent* means that consent is valid only if the person giving the consent understands:

- the nature of what is being consented to;

- the benefits and/or the risks of harm; and

- what alternatives are available to the ward or protected person if consent is given or if consent is not given.

The person giving consent must be able to give a reason for selecting a particular alternative.

Informed consent requires that the person giving consent:

- has the knowledge available to make a reasonable decision;

- has the capacity or ability to make reasoned decisions based upon information that applies to the situation; and

- is giving consent voluntarily and without coercion, that is, there is no intimidation or pressure, either obvious or suggested from another person.

3. How are the Ward's or Protected person's rights protected when making decisions? A person under guardianship or conservatorship retains any civil or constitutional rights not specifically given away by the court. When giving consent, the guardian or conservator must protect these legal rights and interests of the ward or protected person and must take appropriate action when those rights are, or appear to have been, limited or violated. The guardian or conservator must take appropriate action on behalf of the ward or protected person according to the state and federal law which applies to the situation.

4. Must the ward's or protected person's wishes be considered in every decision? Whatever the need may be, the guardian or conservator must always consider the ward's or protected person's wishes. A ward or protected person always has certain rights that must be protected by the

guardian or conservator when making decisions. A guardian or conservator may not make decisions that restrict these rights.

A guardian may be given, "the duty and power to exercise supervisory authority over the ward or protected person in a manner which limits civil rights and restricts personal freedom *only to the extent necessary* to provide needed care and services" (Minnesota Statutes section 524.5-313(c)(6)) [emphasis added].

B. **RIGHTS OF WARDS AND PROTECTED PERSONS:** A guardian or conservator has the responsibility to ensure that these rights are not violated. These rights must be reviewed and explained to the ward or protected person in a manner which he or she can best understand.

1. What are a ward's or protected person's civil and constitutional rights? A person under guardianship or conservatorship retains any civil or constitutional rights not specifically given away by the court.

   - 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 persons of ward's or protected person's choice.
   - The right to procreate.
   - The right to receive health care and medical treatment.
   - The right to refuse medical treatment (this right is exercised by the guardian or conservator on behalf of the ward or protected person when it is reasonable and in the best interest of the ward or protected person, such as the guardian consenting to a physician's order for **do not resuscitate**)
   - The right to vote.
   - The right to decide what will happen to personal possessions upon death.
   - The right to have personal desires, preferences and opinions given due consideration in decisions made.
   - The right to legal representation.
   - The right to marry.

2. What are a Ward's or Protected person's statutory rights under Minnesota law? The ward or protected person also has the following basic protections and rights according to Minnesota Statutes sections 524.5-120:

   - The right to treatment with dignity and respect;
   - The right to due consideration of current and previously stated personal desires, medial treatment preferences, religious beliefs, and other preferences and opinions in decisions made by the guardian or conservator;
   - The right to receive timely and appropriate health care and medical treatment that does not

violate known conscientious, religious, or moral beliefs of the ward or protected person;

- 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 ward or protected person's conditions and needs;

- The right to petition the court to prevent or initiate a change in abode;

- The right to care, comfort, social and recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources;

- The right to be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the ward or protected person's clothing, furniture, vehicles, and other personal effects, to object to the disposition of personal property and effects, and to petition the court for a review of the guardian's or conservator's proposed disposition;

- The right to personal privacy;

- The right to communication and visitation with persons of the ward or protected person's choice, provided that if the guardian has found that certain communication or visitation may result in harm to the ward's health, safety, or well-being, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;

- The right to marry and procreate, unless court approval is required, and to consent or object to sterilization as provided in section 524.5-313, paragraph (c), clause (4), item (iv);

- The right to petition the court for termination or modification of the guardianship or conservatorship or for other appropriate relief;

- The right to be represented by an attorney in any proceeding or for the purpose of petitioning the court; and

- The right to vote, unless restricted by the court.

C. **DETERMINING AND CONSIDERING WISHES OR PREFERENCES:** A guardian or conservator must always give consideration to the ward's or protected person's reasonable wishes. What should the guardian or conservator do if the wishes of the ward or protected person conflict with what the guardian or conservator thinks is in the ward's or protected person's best interest?

Example 1: An elderly ward or protected person who is incapacitated, but not incompetent, is in need of at least partial daily supervision for medical or safety reasons, but wishes to stay in their home rather than being placed in a more supervised living environment.

Example 2: A person with developmental disabilities who has limited independent living skills wishes to reside independently, rather than live in a home with supervised living services.

In both examples, the guardian is bound by law to consider the ward's reasonable wishes. The guardian must then choose services that provide the needed level of support, but that are also the least restrictive type of support. For an elderly person that may mean seeking in home health care services and house keeping services.

For the person with developmental disabilities services may include a 24 hour plan of care, but not 24 hour supervision. The person may need assistance in planning menus, grocery shopping, learning homemaking skills, and money management.

1. What if the ward or protected person cannot speak or is not understandable? Some people may have difficulty expressing their wishes due to a medical condition, a mental health problem, or a developmental disability. A guardian or conservator is required to get to know the person and how they communicate, to aid in making decisions. The guardian or conservator may need to seek assistance in determining the ward's or protected person's preferences by having the person's communication skills assessed.

   For example, through a communication assessment the guardian or conservator should be able to determine how the person communicates. Some people may need some form of assistive technology to communicate. A speech pathologist with expertise with the particular speech and communication needs should be sought, such as, persons with speech delays due to developmental disabilities, persons recovering from strokes, persons recovering from a traumatic brain injury, or persons experiencing dementia.

D. CONSENT OR DENIAL CHECKLIST: Review the questions below when making a consent determination. If the answer is "no" to any of the questions the guardian or conservator must stop and obtain the necessary information in order to continue with the decision making process.

- Has the court modified the person's rights in this area?
- Does the guardian or conservator have the legal authority to make the decision?
- Has the guardian or conservator determined whether or not this consent requires the review and approval of the court?
- Does the guardian or conservator understand the nature of what is being consented to?
- Does the guardian or conservator understand the benefits and/or the risk of harm to the ward or protected person if consent is, or is not, given?
- Has the guardian or conservator weighed the benefits and/or the risk of harm?
- Is the guardian or conservator aware of all the alternatives?
- Can the guardian or conservator give a reason for selecting this particular alternative?
- Is this the least restrictive, most normalized alternative given the person's need for supervision and protection?
- Has the guardian or conservator obtained and weighed the opinion, religious, moral, or cultural beliefs, desires, and preferences of the ward or protected person?
- Has the guardian or conservator obtained and weighed the opinion of the nearest actively involved relative(s)?
- Has the guardian or conservator consulted the necessary experts for their opinion?
- Are all involved interested parties in agreement with this decision?
- Is this decision a reasonable decision that would be made for any person regardless of disability, age, race, ethnicity, place of residence?
- Has the guardian or conservator determined what funding resources are necessary and available to pay for this alternative?
- Is the necessary funding available?
- Has the guardian or conservator determined whether this decision requires a revision to the person's service plans?

- Has the guardian or conservator made the necessary changes to the person's service plans?

E. **MEDICAL TREATMENT DECISIONS:** A major responsibility given by the court to a guardian of the person is that of determining medical treatment. The guardian should consider the ward's currently expressed wishes, as well as all available information about the ward's past religious beliefs, values, and expressed wishes. The guardian should also seek input from involved family members.

1. When is it necessary to go to court for approval of medical treatment? In some cases, including where the ward expresses any objection to the proposed treatment, the guardian may need to request a hearing to obtain the probate court's decision on whether the treatment should be authorized or withheld. Depending on the circumstances, decisions to authorize termination of life-support may also require a court order. It is very important for guardians to consult their attorneys in these cases. Psychosurgery, electro-convulsive therapy (ECT), sterilization, experimental treatment of any kind, or treatment which violates the known religious, conscientious, or moral beliefs of the ward, requires court approval after a special court hearing.

2. What happens if the ward refuses treatment? There may be times when a medical treatment is ordered which has been determined to be in the best interest of the ward, but the ward refuses the treatment. This can occur in any case, but occurs most frequently in regard to administration of psychotropic medications. In these situations the guardian with the power to consent to medical treatment may override the decision of the ward to refuse treatment.

   If the ward refuses treatment the guardian must determine what the refusal is based upon. Is the ward able to express a reasonable objection based on known religious, conscientious, or ethical beliefs? If so, the guardian may not consent even if treatment is in the ward's best interests.

   If the person's refusal is not based on any of the reasons above, and is not rational, the guardian does have the authority to override the refusal and consent to administration of the treatment regardless of the person's refusal. When administering a treatment which a ward has refused, caution and protection must be used if it is necessary to physically or mechanically restrain the person in order to administer the medication or treatment.

   For persons who have a developmental disability and are being served by a licensed service provider, such a procedure would be exempted from Minnesota Rules, part 9525.2700 to 9525.2810, commonly known as 40. This rule regulates aversive and deprivation procedures used by providers of services to persons with developmental disabilities. In this case the restraint is considered a medical mechanical restraint, as the person must be held in order for the treatment to be administered to treat a specific medical condition that will not improve without the use of restraint. This action must be planned and documented in the person's individual care or program plan and the restraint ordered by the physician.

   Guardians must use caution when overriding a ward's refusal and assure that the solutions are solutions of last choice after every other less restrictive alternative has been considered and used or rejected and this process has been sufficiently documented. In this situation, alternative, non-judicial means of securing consent are acceptable so long as they ensure a high degree of reliability, the final decision isn't being made by the person recommending or administering the treatment, and that there are adequate procedural protections for the ward. The ward may ask a court to review the guardian's decision.

F. **MEDICAL TREATMENT CONSENT CHECKLIST:** The following is a guideline for procedures to follow when making medical decisions:

- Is the decision legally the guardian's to make? If in doubt, refer to the guardian's Letters of Guardianship issued by the court.

- Is there a regular physician? Is the physician aware of the ward's living arrangements and current care or assistance being given by others?

- Is the ward now following the recommended medical procedures? If not, what are the reasons?

- Can the ward remember and correctly follow medical advice, medication schedules, and report warning signs of possible problems?

- Are there laws governing the requested care or treatment?

- What are the less restrictive options? Have they been considered prior to this current request for alternative care or treatment?

- Has the guardian visited the ward recently? Does the situation the guardian observe reflect the facts being described to the guardian by others?

- Has the guardian solicited the ward's opinion regarding the requested care or treatment? Has the guardian explored for evidence of past opinions of the ward regarding care or treatment?

- Does the requested care or treatment violate the ward's religious, conscientious, or moral beliefs?

- Has the guardian solicited the opinions of the ward's family and friends? Is there any evidence that their opinions may be based on some personal gain?

- Should the guardian solicit the opinions of other experts such as advocates, biomedical ethics committee, medical specialist, psychiatrist, psychologist, or others?

- Is there evidence that the care or treatment being requested discriminates against the ward? Would it be requested if the person were not elderly/developmentally disabled/indigent, etc.?

- Is there consensus among the interdisciplinary team?

- Does the guardian have all the necessary information documented in writing?

G. <u>ADDITIONAL CONSIDERATIONS FOR CONSENTS FOR LIMITING MEDICAL TREATMENT</u>: This would include, but is not limited to: Consent for orders of DNR – Do Not Resuscitate; withholding or withdrawing ventilators for assisted breathing, withholding or withdrawing artificially administered nutrition and hydration, or therapies such as kidney dialysis, chemotherapy or radiation, or surgery.

For any medical treatment decisions beyond those which are fairly routine, the following steps are recommended:

- All interested parties should be involved so that all viewpoints are represented. This may help to minimize legal risks. All family members who are involved with the ward's care should be included and any other family members who may reasonably wish to be included should also be notified.

- Input should be solicited from others directly involved in the care of the ward, as they may have information about the ward's wishes.

- The physician should participate in a full discussion with the guardian, the ward, if at all possible, and other interested persons. The physician should be prepared to give a medically and ethically sound reason for the treatment recommendation. If the physician is not clear, do not make a decision until you understand the issue.

- The guardian should be aware of and understand the ward's:

  - history of and current general medical and psychiatric conditions and specific diagnoses and the cause and recent history of the person's deterioration;
  - is the condition permanent and irreversible; is the condition terminal; what is the prognosis and life expectancy with or without treatment;
  - the anticipated results and risks of the proposed treatment; the probable consequences if the treatment is or is not given.

  The guardian will need to consult with the physician on these matters and may need to review the medical records.

- A second medical opinion should be obtained regarding the medical and ethical soundness of the treatment recommendation, and to possibly consider alternative treatment options.

- A biomedical ethics committee consultation should be sought to assist the decision maker in considering the medical and ethical soundness of the treatment recommendation, to request clarification on any medical or ethical issues.

- The guardian should consider the 'good faith' of those who participate in the decision making process.

- The guardian should consult with his or her own attorney, and may need to request specific authority from the court.

H. **CONSENT FOR BEHAVIOR CONTROLLING INTERVENTIONS:** There may be occasions when the behavior of the ward becomes difficult for care staff to deal with effectively. At other times, some ward's behavior may be of danger to self or others. In these cases the guardian must consider which options are available to help the ward get the behavior under control, and which are the least restrictive and least intrusive to the ward.

When considering the use of any behavior management intervention it is important to realize that some types of behaviors will not be reduced or eliminated and may increase. This is most common in persons who have Alzheimer's disease, or other related dementia diseases. This also occurs in some people who develop permanent side effects from long term administration of certain psychotropic medications. In these cases the goals and outcomes of behavior management will focus more on helping the person avoid harm or danger to self or others, not on reduction and elimination of the behavior.

1. What are the options to control behavior? There are a variety of options to consider. These include behavior management, physical restraints, and medication, or a combination of these approaches. The discussion here addresses behavior management and physical restraint, the use of medication is discussed later.

2. What is behavior management? Behavior management or behavior intervention is based on the principle that behavior followed by a positive and pleasurable experience will strengthen and increase. A behavior followed by a negative or unpleasant experience will weaken and decrease. Behavior management is less restrictive, less intrusive than the use of medication to control behavior or the use of physical restraints.

3. What are the keys to successful behavior management? The key to a successful behavior management plan is assuring that:

   - the behavior management plan fits the needs of the individual,
   - that alternative, appropriate behavior skills are developed as part of the behavior management plan, as well as concentrating on reducing the undesired behavior,
   - it is understood what the person may be trying to communicate through the inappropriate behavior, and
   - it is discovered what is happening within the person's environment that may be reinforcing the behavior and causing it to continue, and then planning to change that part of the environment or how the person experiences that environment.

4. What if the Ward's behavior is very challenging? The terms "aversive and deprivation" designate and describe a category of techniques and procedures applied under the general term behavior management or behavior intervention. Physical Restraint is a procedure which falls under this category. Aversive and deprivation procedures combined with positive approaches have been effective in reducing, and in some cases eliminating, challenging behavior. Most often it serves to protect the person, property, or others from injury or harm. The use of aversive or deprivation procedures is not recommended unless other less restrictive and positive methods have been tried first and it is used under the supervision of a person trained in behavior management and behavior analysis.

   Each individual behavior management program plan that uses aversive or deprivation techniques must identify specific conditions for the individual that must be met before the aversive or deprivation technique is used. Positive approaches must be tried and shown to be ineffective before the start of an aversive or deprivation procedure. Positive procedures must be used at the same time as any aversive or deprivation procedure. All parts of the behavior reduction plan must be specifically related to the person's own needs and closely monitored.

5. When is behavior management really necessary? The guardian must closely follow the use of any behavior management programming to assure that it is always meeting the needs and best interests of the ward. The guardian must also be aware that such techniques may be used more for the convenience of care staff than for the best interest of the ward.

   Under federal regulations for nursing homes, informed consent from the guardian must be given before aversive procedures are used. For example, physical restraints, such as a "poesy," for use in a wheel chair would be considered a restraint. A doctor may prescribe the use of restraints for medical purposes. But there may be occasions when care staff use this type of restraint to control a person because it is easier than engaging the person in some other appropriate or needed activity. This may happen more frequently in care facilities or by in-home care providers where care staff are untrained and underpaid, or there is not enough staff to attend to all the people for whom they are responsible. In any situation the guardian must be informed about the use of the restraint and given information about how and why it is being used before giving consent for its use.

6. What are the Ward's rights when a behavior management plan is used? All licensed service providers operate under very specific regulations which allow them to perform certain functions, but which also protect the human, civil, and legal rights of the person receiving the service. The guardian should become familiar with the rights of the ward within any service the person may receive. Also, the guardian should ask the service provider to give him or her a written copy of the rights of persons receiving their services and ask them to explain any portion which the guardian may not fully understand.

I. **BEHAVIOR MANAGEMENT CONSENT CHECKLIST:** Before consenting to the use of aversive or deprivation procedures, make sure that there is careful planning and that it is the last alternative to be tried. To assist the guardian in making these decisions, a checklist has been developed. If the guardian answers "No" to many of these questions, he or she may want to re-consider the use of aversive/ deprivation procedures.

- Does staff have reasonable knowledge of behavior management techniques?
- If aversive and deprivation procedures are being planned, are they truly the 'last resort?' Has there been a succession of well designed positive behavior management techniques which have been completely implemented and found unsuccessful?
- Have staff been instructed on how to develop non-aversive, positive programs for challenging behaviors?
- Have the possible side effects of medication, behavioral techniques, deprivation, and aversive stimuli been fully discussed?
- Will the care-giver be able to implement these methods in the ward's home? What will happen if the care-giver cannot or does not want to implement the programs?
- Can the behavior management procedure be used in all the settings in which the ward exhibits the behavior?
- Is the environment in which the ward resides or receives services stimulating and supportive?
- Is the guardian sure that the disruptive behaviors are not the result of frustration? Communication limitations? Lack of alternative means to express anger? Refusal? Boredom? The result of untreated illness or pain?
- Is the facility or program including the guardian in its planning for behavior management procedures?
- Have staff been instructed on how to perform the procedure?
- Do staff have resources available for consultation, such as a social worker, a psychologist, or psychiatrist?
- Does the guardian feel that the ward's dignity is being maintained throughout both the planning process and the administration of the behavior management procedures?
- Has the ward recently experienced life events which would explain the behaviors?

J. **CONSENT FOR USE OF BEHAVIOR ALTERING MEDICATION:** Any guardian who makes decisions for an individual is naturally concerned with choices regarding behavior altering medication. These medications are called "psychotropics." A subclass of these medications is called "neuroleptic" medications. Psychotropic medication will not necessarily solve or eliminate all problems an individual is facing, yet it may be unfair to deprive an individual of medication which can assist in the person's life. It is how the medication is used that is the key.

1. What happens after consenting to the use of medication? The guardian needs to continue monitoring the use of this medication. Consenting to the use of the medication is the beginning of an on-going process of evaluating the effectiveness of the treatment, to ensure that it is of benefit to the person. The guardian has the authority to refuse the use of medication, as well as agree to the use of this class of medications. The guardian should include all medication strategies and results in the annual well-being report which he or she submits to the court.

K. **BEHAVIOR MEDICATION CONSENT CHECKLIST:** If the questions in this checklist cannot be answered, the guardian should consider an alternative method of behavior management:

- What are the specific behaviors or statements of the individual that the medication is to change? If a psychiatric diagnosis is present, what are the specific behaviors that the medication is to change?

- What information -- or data -- is recorded and collected and used to monitor the behavior in order to determine if the psychotropic medication is having its desired effect? Is the data "opinion" or actually observed behavior? Is the data shared with the guardian?

- What are the specifics of the medication: the dose, the possible dose range, the route of administration, the expected duration? How long is it to be used before it is concluded it is working or not working?

- What are the side-effects and risks of the medication? How are they treated? Is the person at higher risk for some of the side effects?

- How will the medication be monitored? What is the monitoring system? What specific assessment tools are used to check for side effects? How often are they used? How will the guardian or conservator be informed if side effects are observed?

- What other behavior management techniques are being used along with the use of the psychotropic medication? What kind of educational, environmental or skill building efforts are also in place? Have these been considered and properly addressed?

- Is the lowest effective dose of the medication being used? If attempts to lower the dosage are made, are these done very gradually in order to prevent withdrawal reactions?

- Are medication changes occurring without the guardian being informed? Are too many "emergencies" occurring and medication started without the guardian's consent?

- The most important question: How is the person doing when the guardian sees the person and observes the person's daily activities? Is the individual participating in life's activities to the extent of their ability, or: (a) is the behavior still interfering with life despite the medication; or (b) are side effects present and interfering with life activities?

VIII. SERVICE PLANNING

A. HOW TO PLAN FOR SERVICES: A ward or protected person may be entitled to receive certain services or financial assistance, called entitlements, or certain benefits, if he/she meets specific eligibility requirements. The guardian or conservator has responsibility under state statute to investigate to determine whether or not the ward or protected person is eligible for any of these programs. The ward or protected person may be eligible for certain entitlements or benefits based on his or her income, age, or medical condition.

1. How does a person apply for these entitlements and benefits? To apply for these entitlements or benefits, contact a financial worker or case manager at the ward's or protected person's local county social services office. Many advocacy and community organizations working with certain populations, such as the elderly or the disabled, can be contacted for information about these programs as well. For programs which are part of the Social Security Administration, application is made by contacting the Social Security Administration.

   The guardian or conservator works with service providers and with the person's case manager or social worker, if any, to identify needed services, eligibility for those services, and to plan for how those services will be provided. Any service should be provided with a specific goal in mind so that the guardian or conservator can monitor and evaluate the service to determine if the service is being provided as needed and as agreed.

   When planning services the guardian or conservator, in consultation with case managers/social workers, care providers, and family, should monitor and evaluate services to determine:

   - that services are consistent with the person's service or care plan,
   - that services are directed to achieve outcomes/goals specifically identified for the person;
   - the extent to which providers are fulfilling responsibilities;
   - the extent to which services are coordinated between, or by, the guardian or conservator, the service provider, and the case manager;
   - the person's health and safety needs are being met;
   - the person's civil and legal rights are being protected;
   - the consumer and legal representative are satisfied with the services; and
   - if changes are needed in the service plan or service delivery.

2. What benefits are available? There are a variety of benefit and entitlement programs which are available. These programs are subject to change and the guardian or conservator should check with the county social service agency regarding current eligibility requirements for benefit or entitlement programs and availability of services.

CHAPTER IX

IX. LEGAL PROCEDURES AND REQUIREMENTS

A. PROCEDURES TO ESTABLISH A GUARDIANSHIP/CONSERVATORSHIP: In this section the basic steps necessary for a petitioner to begin the process of establishing guardianship or conservatorship are discussed. A petitioner may proceed with these actions with an attorney, or pro se, meaning without an attorney. The following information is meant to familiarize either type of petitioner with the overall process.

This information is not legal advice. It is recommended that an elder law attorney who practices law in the area of guardianship and conservatorship be consulted. It is very important that a lawyer is found who is familiar with these procedures to ensure that they are followed correctly. Otherwise, inexperience in this field can be costly both in money and time. However, an attorney is not required and petitioners may proceed pro se.

Prior to going forward with plans to establish a guardianship or conservatorship, a petitioner must determine, possibly with the help of medical, social service, and/or other professionals or care givers, whether or not guardianship or conservatorship is necessary. *(Refer to section,* **ASSESSING THE NEED FOR LEGAL REPRESENTATION).**

There must be cause, or reason, to believe that the person is incapacitated. It is not sufficient to proceed just because a person has a diagnosis which may indicate incapacity. There must be evidence which supports this belief, such as behavior which demonstrates incapacity, and there must be no other less restrictive alternatives available to meet the needs of the person. It must be kept in mind that the individual has the potential and the right to contest any guardianship or conservatorship proceedings.

1. How is a Guardian or Conservator appointed? In order to establish a guardianship or conservatorship, the proper procedures need to be followed. First and foremost, an appropriate guardian or conservator must be found (*refer to section,* **WHO MAY ACT AS GUARDIAN OR CONSERVATOR***)*. A guardian or conservator may be a relative, or other individual or agency. Once a guardian or conservator is found, a petition is made to the court with the appropriate information, for example, the reason for guardianship or conservatorship, treating personnel reports (psychiatrist, physician and clinical team), and all relevant documentation.

   A petition for appointment of a guardian or conservator is a legal form requesting that the probate division of the district court appoint a competent adult person(s), or a professional guardian/conservator to act as guardian or conservator for a person in need of substitute decision making. Any person may file a petition for the appointment of a guardian or conservator for an incapacitated individual. The person filing the petition is called the petitioner.

   A person may petition to have him or herself appointed as guardian or conservator, or to appoint another family member, friend, or a professional guardian or conservator, either an agency or an individual. In Minnesota, two or more people may be conservators or guardians of an incapacitated individual. Guardians or conservators are also permitted to live outside of Minnesota, if they are able to carry out their powers and duties effectively.

   An incapacitated person, or any person interested in his or her welfare, may petition for a finding of incapacity and appointment of a conservator. An incapacitated person may not petition for appointment of a guardian/conservator for a person who is incapacitated.

2. What is required in the filing process? To file for guardianship or conservatorship the petitioner must obtain and complete the correct forms, file them at the right place and in the right order, and sometimes even use the right color ink to fill them out. Filing the incorrect forms or

filing forms incorrectly may significantly delay the process or in some cases stop it altogether. It is recommended that the required filing procedures be verified with the court administrator of the probate division of the district court where the petition will be filed. The staff of the court administrator's office can answer questions regarding proper filing procedures but cannot, and will not, answer questions requiring legal advice.

a. *Step 1: Obtain forms*: The forms necessary to begin a probate proceeding can be located on the state court website (www.mncourts.gov/forms). The forms may be accessed as Microsoft Word or Adobe/PDF files. The forms are uniform, meaning that same forms may be used:

1) To appoint a guardian of the person and conservator of the estate;
2) To appoint only a guardian of the person;
3) To appoint only a conservator of the estate;
4) To provide the annual filings needed for a guardian and/or conservator;
5) To allow conservator accounts; and
6) To discharge the guardian and/or conservator.

b. *Step 2: Complete forms*: The petitioner must answer and fill out all the questions on the forms according to the specifics of the proposed ward's or protected person's circumstances.

c. *Step 3: File forms*: Once completed all forms should be filed with the court administrator. There is a filing fee which varies from county to county. Once the petition is filed a court date will usually be scheduled for 4-6 weeks later.

All forms required for guardianship or conservatorship must be filed in the Probate Division at the district court in the county where the proposed ward or protected person resides.

3. What are the costs of filing? When and how to file *In Forma Pauperis*: Since the total fee, filing fee plus law library fee, may vary in each County, you should check with the County in which you wish to file for the correct fee. If a petitioner is unable to file for guardianship or conservatorship because he or she cannot afford court costs or attorney fees, they may file for *in forma pauperis* status. This allows people who have very low income and assets and are in need of a guardian or conservator to have the court costs and other associated costs waived. However, if a petitioner wants to apply for *in forma pauperis* status, he or she must file the additional forms at the same time the petition for guardianship or conservatorship is filed. These forms can be obtained from the Court Administration office or found on the state court website at www.mncourts.gov/forms.

B. BEFORE THE HEARING: Before the hearing the petitioner must prepare and file the following forms with the court:

1. *Step 1: Complete and file* - **Petition for appointment of general conservator or guardian**

A petition for the appointment of a guardian or conservator is completed and filed with the court. The petition may be filed by the person to be protected, any person interested in the estate, affairs or welfare of the protected person such as a parent or any person adversely affected by improper management of the property and affairs of the protected person.

Each petition for guardianship or conservatorship must be written specifically for each proposed ward or protected person. The powers over that individual must be backed up by evidence that demonstrates that there is a need for the guardianship or conservatorship. Upon hearing the petition, the court then makes an order to either appoint the guardian or conservator and will grant very specific, limited powers based on the petition and the evidence, or may dismiss the petition due to lack of evidence proving the need for a guardian or conservator.

In all cases of guardianship and conservatorship the probate courts must only grant powers based on that individual's specific needs. Petitioners should, therefore, be very specific in requesting powers, and should petition for all powers only when they are convinced that other less restrictive options is not appropriate.

2. *Step 2: Complete and file* - **Notice of Hearing and Notice of Rights and Setting Date for Hearing**

   When the Petition for Appointment of General Guardianship/Conservatorship is filed, the Notice of Hearing and Notice of Rights must also be filed. Once these forms are filed, the court will set the time and place for the hearing and must order that notice be given of the hearing. They do this by filling in the bottom half of The Notice of Hearing and Notice of Rights form and sending it back to the petitioner. This will show the time and location of the hearing and notifies the proposed ward or protected person that they have the right to request an attorney to represent them.

3. *Step 3: Complete and Mail.* **Notice of hearing and notice of rights**

   After the court has set the date and time for the hearing the petitioner must mail a copy of the Notice of Hearing and Notice of Rights, and a copy of the Petition for Appointment of General Guardian/Conservator to all interested parties, including: any spouse (or person who lived with the person for six months or more), parents, adult children, and brothers or sisters of the proposed ward or protected person, and other interested persons (see petition and Minnesota Statutes § 524.5-102 subd. 7). Notice of the time and place of the hearing is given to the proposed ward or protected person and other persons specified by statute. *These must be postmarked at least 14 days prior to the hearing date.*

   If the proposed ward or protected person lives in a residential facility, which includes group homes, nursing homes, and state institutions, the petitioner must also mail the notice to the administrator of the facility. It is also necessary to send notice to the program administrator if the proposed ward or protected person lives in a waivered services residence or in foster care. If the proposed ward or protected person is currently under public guardianship or conservatorship or guardianship, it is necessary to send notice to the Commissioner of Human Services.

4. Who is the court visitor and what does he or she do? The Notice of Hearing and Notice of Rights, along with the Petition for Appointment is given to the proposed ward or protected person at least 14 days before the hearing indicating that someone is petitioning for guardianship or conservatorship. That means that a "court visitor" or "process server" must personally give a copy of the petition and of the Notice of Hearing and Notice of Rights to the proposed ward or protected person and read it to him or her. If the proposed ward or protected person does not receive personal service of the notice at least 14 days before the hearing, the proceedings are invalid.

   The court may appoint a visitor who will visit the proposed ward or protected person, give notice of hearing rights, and submit a report to the court before the hearing, or the court may ask the petitioner if they know someone who could serve notice to the proposed ward or protected person. Some probate courts have staff members who will perform the personal service on the proposed ward or protected person. If the court assigns someone to do this they may assess the petitioner a fee.

   The court visitor must explain to the proposed ward or protected person his or her right to contest the petition. After the visit the visitor will file a report with the court as to his or her own independent appraisal of the situation. This report will include a recommendation as to whether guardianship or conservatorship seems necessary. If guardianship or conservatorship is recommended then the report will also recommend which specific powers that should be granted. The petitioner must obtain a copy of the Visitor's Report from his or her attorney or from the court and review it.

5. *Step 4: Complete and File* - **Affidavit of Mailing Notice of Hearing and Notice of Rights and Petition**: Prepare an Affidavit of Mailing of the documents above, attach a copy of each of the documents to the Affidavit, and file it with the Court. The court will require an "Affidavit of Mailing" to verify that copies of the petition and the hearing notice were sent to all of the proper people.

C. PREPARING FOR THE HEARING: The hearing itself is the same for both conservatorship and guardianship and may be very simple unless it is contested by someone. The petition may be contested by any interested person who thinks there is no need for the appointment of a guardian or conservator, or that the proposed guardian or conservator will not be able to act in the best interest of the proposed ward or protected person, or by the proposed ward or protected person himself or herself.

1. Who must contact witnesses and gather evidence? The petitioner must make sure that all witnesses are ready to testify and that all other documentation is filed with the Court. The rules of evidence apply to these hearings. There is a legal presumption of the capacity of the proposed ward or protected person. The burden of proof is on the petitioner. The standard of proof is that of clear and convincing evidence.

2. How is evidence collected for the hearing? Before the hearing the petitioner should collect evidence that will support the need for a guardian or conservator. This evidence should include specific examples of past behaviors of the proposed ward or protected person which will show the incapacities the petitioner is trying to demonstrate. This might include the latest psychological report, any medical reports, current service or care plans, and any other current assessments. The petitioner is responsible for getting all of these reports and bringing them to the hearing. It is also helpful to bring someone along who can support the petitioner's statements, such as a social worker.

3. Should the proposed ward or protected person attend the hearing? The proposed ward or protected person must be present at the hearing if he or she is within the state, unless excused by the court. It is strongly encouraged that the proposed ward or protected person attend the hearing even if there will be little or no comprehension of the proceedings on his or her part, or even if he or she waived their right to attend. This will allow the court to observe his or her responses to questions asked of him or her.

   For some individuals, significant behavior problems may be disruptive in the courtroom. In these cases, the proposed ward or protected person should still attend the hearing. Allowing the Judge to observe the person may help support the petitioner's case. The courts are understanding of disruptive behavior, but families may want to consider waiting outside of the courtroom with the proposed ward or protected person until their case is called if such behavior is likely.

   There may be situations where medical conditions prohibit attendance at the hearing. In these cases, the petitioner will need to have a physician fill out the bottom portion of the Physician's Statement in Support of Guardianship/Conservatorship (and re: Ward's/Protected Person's Inability to Attend Hearing).

4. Does the proposed ward or protected person have an attorney? A proposed ward or protected person has the right to be represented by legal counsel in every new proceeding. The petitioner should contact the attorney for the proposed ward or protected person and attempt to resolve any differences. Appointment of an attorney does not necessarily mean that the proceedings will be contested, but ensures that the proposed ward's or protected person's interests are being protected.

D. THE HEARING: The court visitor may be asked to testify about his or her personal observations or write a report to the court regarding his or her personal observations.

The petitioner will be asked to state why he or she thinks the individual needs a guardian or conservator. At this time they should talk about the evidence they have submitted. The court presumes that the proposed ward or protected person is competent, so it is up to the petitioner to prove that the individual is incapacitated.

Once all of the evidence has been heard, there are several potential outcomes:

- The court may grant conservatorship or guardianship, as requested, and the court then enters an Order stating that fact.

- The court may decide that the person needs less assistance than was requested and may modify the petition to a less restrictive form. For example, the court may grant less powers than were requested.

- The court may determine that the individual does not need a conservator or guardian and dismiss the petition.

1. What is a bond and when is it necessary? A Bond is a promise by a bonding Company that protects the protected person from mismanagement by the conservator of the estate. In the event of mismanagement, the court may decide that the bonding company will reimburse the estate for the missing money, and that Company can recoup the money from the conservator.

   Effective August 1, 2009, the court shall require the conservator to post a bond where the value of the personal property of the estate in the initial inventory filed by the conservator is expected to be at least $10,000. The bond requirement applies to conservators appointed after July 31, 2009 and to conservatorships reviewed by the court after August 1, 2009.

   If a conservator of the estate was appointed, the court may require a bond which is equal to the value of the estate and set by the court. Each year the conservator must continue to pay the bond premium. Petitioners can get a bond from any bonding Company. No bond is required for a guardianship of the person only.

E. **AFTER THE HEARING**: After the hearing, the petitioner must prepare and file the following forms with the court:

1. *Step 1: Complete and File* - **Order Appointing General Guardian or Conservator** Once the hearing is finished, an Order Appointing General Guardian or Conservator should be filled out and filed with the court administrator. The petitioner should fill out only the top portion of the form and the Findings of Fact section. The court fills out the conclusions of law section. In some counties it may be necessary for the petitioner to prepare a proposed Order and file it with the court. In other counties, the court will complete and issue the Order on its own. Check with the Court Administrator to see how the court handles the Order.

2. *Step 2: Complete and File* - **Notice of Entry of Order and Right to Appeal**
   At the same time that the Order Appointing General Guardian or Conservator is filed, a Notice of Entry of Order and Right to Appeal form must be filled out and filed. Copies of these two forms must then be sent to the ward or protected person and to his or her attorney. Some courts will do this, other courts require the petitioner to do this mailing. If so, another Affidavit must be filled out and filed with the court to show that this was done (see below).

   Although the ward or protected person has 60 days to appeal the order, the guardianship or conservatorship is effective as soon as the proposed guardian or conservator has **qualified** and the court issues **letters.** If the ward or protected person appeals the court order within 60 days, the guardian's or conservator's powers and duties may be suspended during the appeal process.

3. *Step 3: Complete and File* - **Acceptance of Appointment by Corporation/Individual and Initial Informational Statement**
   At this point the petitioner will need to fill out an "Acceptance of Appointment" form, have it notarized, and file it with the court administrator. This **qualifies** the newly appointed guardian or conservator to act as guardian or conservator. The form asks the guardian or conservator to swear that he or she will faithfully perform his or her duties.

   Before the initial appointment, the proposed guardian / conservator must file an informational statement with the court. The statement must be a sworn affidavit that contains information regarding the proposed guardian's / conservator's status and capacity to serve as a guardian / conservator.

4. *Step 4: Request* - **Letters of General Guardianship/Conservatorship**
   A "Letters of Guardianship or Conservatorship" form must also be filed and completed by the court. The petitioner must specifically request and pay for a certified copy of the signed form from the court administrator's office or they will not receive one. The letters are the guardian's or conservator's proof of authority to act on behalf of the ward or protected person. It may be necessary that the guardian or conservator purchase extra certified copies of the letters.

5. *Step 5: Complete and File* - **Inventory**
   If a conservator of the estate is appointed, he or she must complete and file with the court an "Inventory" form within 60 days of being appointed.

F. ANNUALLY AFTER THE HEARING: After a person is appointed as guardian or conservator he or she will be required to file with the court additional forms every year: a Personal Well-being Report (only filed by guardian of the person); an Annual Account (only filed by conservator of the estate); and the Annual Notice of Right to Petition. These forms must be filed within thirty days of the anniversary of the date that guardianship or conservatorship was appointed. If an annual report is not filed within 60 days of the required date, the court shall issue an order to show cause.

1. What is the Personal Well-being Report? The Personal Well-being Report is filed so that the court can remain informed about changes in the ward's residence, medical condition, and mental or emotional condition, and any changes in the guardian's status and capacity to serve as a guardian, and reports any reimbursements for services rendered in the past year that were not reimbursed by county contract. This form must be served on the ward and interested persons of record with the court.

2. What is the annual and final account? It is required that the courts review and accept the accounts on a regular basis in a court hearing. The frequency of these reviews is determined by court rules as well as the court in each county. This form is an accounting of the protected person's estate. The Annual Account form is only required when a conservator of the estate has been appointed. This form shows the court how the protected person's assets have been handled, and provides information on any changes in the conservator's status and capacity to serve as a conservator, and reports any reimbursements for services rendered in the past year that were not reimbursed by county contract. The form must be filed with the court within 30 days from the anniversary date of the appointment of the conservator.

3. What is the annual notice of right to petition and affidavit of service? The Annual Notice of Right to Petition must be filled out by the guardian or conservator and sent to the ward or protected person and interested persons of record with the court. This notice informs the ward or protected person and interested persons of record with the court of the right to petition the court to request a hearing to modify or terminate the guardianship or conservatorship.

G. MODIFICATIONS AND TERMINATION OF GUARDIANSHIP/CONSERVATORSHIP

1. What is a modification of guardianship or conservatorship? If a person no longer needs the complete supervision and protection of a guardian or conservator, but still needs some assistance with decision-making, it is possible to modify a guardianship to a conservatorship, or to modify the powers a guardian or conservator holds to allow the protected person to make more decisions.

   The process for modification of the powers of a guardian or conservator is similar to the process for establishing a conservatorship or guardianship. A *Petition for Modification* is filed with the court. A hearing date is set and notice of the hearing is given to all interested persons by petitioner. Evidence is given at the hearing showing that the person has functional capacity in specific areas and that the right to make decisions in those areas should be restored to the individual. The court will make an appropriate order.

   It is also possible that a guardian/conservator may need to get more powers from the court than when the guardianship/conservatorship was originally established. This is also handled through the modification procedure described above.

2. When does Guardianship or Conservatorship terminate? A guardianship or conservatorship terminates upon the death of the ward/protected person, upon a determination of incapacity of the guardian/conservator, upon removal or resignation of the guardian/conservator, or upon restoration of capacity of the ward/protected person.

   - On petition of the ward or protected person, or any person interested in the ward's or protected person's welfare, the court may remove a guardian or conservator and appoint a successor if it is in the best interests of the ward or protected person.

   - On petition of the guardian or conservator, the court may accept the guardian's or conservator's resignation.

   a. *Restoration to Capacity*. Anyone who is under guardianship or conservatorship but feels that guardianship or conservatorship is no longer necessary, or any interested person who believes that an individual no longer needs to be under guardianship or conservatorship, may file a petition in court to have the individual **restored to capacity.** This means that all of the rights which had been removed from the individual under the court order appointing a guardian or conservator are given back to the individual and the individual is no longer considered to be incapacitated.

      The process for restoring an individual to capacity is similar to the process for establishing a guardianship or conservatorship. A Petition for Restoration to Capacity is filed with the court. A hearing date is set and notice of the hearing is given to all interested persons. Evidence is given at the hearing showing that the person now has the functional ability to handle their personal care and/or manage property.

      It is not necessary for an individual to have gained total control of all functions. Evidence must be given at the hearing showing that the person now has the functional ability to handle their personal care and/or manage property. The statute provides that a person who still has some mental impairment may be restored to capacity if there is functional ability; that is, if he or she is able to care for self or property despite the mental impairment.

   b. *Death of the Ward or Protected Person*. When a ward or protected person dies the guardian or conservator no longer has authority. However, it does not relieve the conservator from the liability of accounting for their actions, nor does it relieve him or her of the obligation to file a final account with the court of the disposition of the assets of the protected person's estate. The conservator must file a final accounting and ask the court to set the account for hearing and discharge.

c. *Successor Guardian or Conservator*. If a guardian or conservator dies, resigns or is removed, and the ward or protected person is still in need of a guardian or conservator, the court must appoint a successor guardian or conservator. This is true even if another family member is listed as the preferred guardian or conservator in a living will.

The process for appointing a successor guardian or conservator is the same as for establishing the initial guardianship or conservatorship. To file for a successor guardianship or conservatorship, use the same petition form used for the initial guardianship or conservatorship. Simply add the word **successor** in front of the word guardian or conservator throughout the petition.

X. COURT PROCEDURES FOR THE APPOINTMENT OF GUARDIANS AND CONSERVATORS - CHECKLIST

A. Procedure for Judicial Appointment of Guardian and Conservator

Task	When due	Form	Date Done
File Petition	n/a	GAC 5-U	
File Physician's statement	File with the petition or shortly thereafter	GAC 7-U	
Schedule hearing with court	Date:_____	GAC 6-U	
File acceptance	Before order can be signed, preferably before the hearing	GAC 1-U	
Submit Background Check Form to Department of Human Services	Before or immediately after the hearing – File with DHS with the applicable fees	GAC103	
Petition and notice of hearing personally served on Ward/Protected Person	At least 14 days before the hearing	GAC 2-U	
Mail notice of hearing on all interested parties	At least 14 days before the hearing	GAC 3-U	
File affidavit of mailing	Before or at the hearing		
Attend hearing			
Date continued to:	Date:_____		
Mail notices of continuance	At least 5 days		
File proposed Order	Before or at Hearing	GAC 8-U	
File proposed letters	Before, at, or after hearing	GAC 4-U	
Date Court Files Order	Date:_____		
Serve Notice of Filing Order & Right to Appeal	Within 14 days	GAC 9-U	
File Inventory	Within 60 days of appointment	GAC 13	
Serve annual notice of right to restoration to capacity	Annually within 30 days of anniversary of appointment	GAC 10-C	
Serve and file personal well-being report; serve annual notice of right to restoration to capacity	Within 30 days of annual anniversary	GAC 11-U	
File Annual Report	Within 30 days of annual anniversary	GAC 14	
File affidavit of mailing of annual notice of right to	Shortly after or with annual filings	GAC 3-U	

petition/annual report			
Petition for allowance of Annual/Final account	At least every 5th year, but that varies by county- or when terminating conservatorship	GAC 14	
Schedule hearing	Date:_____	GAC 15-U	
Attend hearing			
File proposed Order		GAC 16-U	
File Receipt for Assets	Immediately upon transfer of assets		
Optional: File petition confirming discharge with Order	Immediately upon transfer of assets		

B. Procedure for Judicial Appointment of Guardian

Task	When due	Form	Date Done
File Petition	n/a	GAC 5-U	
File Physician's statement	File with the petition or shortly thereafter	GAC 7-U	
Schedule hearing with Court	Date:_____	GAC 6-U	
File acceptance	Before order can be signed, preferably before the hearing	GAC 1-U	
Submit Background Check Form to Department of Human Services	Before or immediately after the hearing – File with DHS with the applicable fees	GAC103	
Petition and Notice of Hearing personally served on Ward	At least 14 days before the hearing	GAC 2-U	
Mail notice of hearing on all interested parties	At least 14 days before the hearing	GAC 3-U	
File affidavit of mailing	Before or at the hearing		
Attend hearing			
Date continued to:	Date:_____		
Mail notices of continuance	At least 5 days		
File proposed Order	Before or at Hearing	GAC 8-U	
File proposed letters	Before, at, or after hearing	GAC 4-U	
Date Court Files Order	Date:_____		
Serve Notice of Filing Order & Right to Appeal	Within 14 days	GAC 9-U	
Serve annual notice of right to restoration to capacity	Within 30 days of annual anniversary	GAC 10-U	
File personal well-being report	Within 30 days of annual anniversary	GAC 11-U	
File affidavit of mailing of annual notice of right to petition	Shortly after or with annual filings	GAC 3-U	

C. Procedure for Judicial Appointment of Conservator

Task	When due	Form	Date Done
File Petition	n/a	GAC 5-U	
File Physician's statement	File with the petition or shortly thereafter	GAC 7-U	
Schedule hearing with Court	Date:_____	GAC 6-U	
File acceptance	Before order can be signed, preferably before the hearing	GAC 1-U	
Submit Background Check Form to Department of Human	Before or immediately after the hearing – File with DHS with the applicable fees	GAC103	

Services			
Petition and Notice of Hearing personally served on Protected person	At least 14 days before the hearing	GAC 2-U	
Mail notice of hearing on all interested parties	At least 14 days before the hearing	GAC 3-U	
File affidavit of mailing	Before or at the hearing		
Attend hearing			
Date continued to:	Date:_____		
Mail notices of continuance	At least 5 days		
File proposed Order	Before or at Hearing	GAC 8-U	
File proposed letters	Before, at, or after hearing	GAC 4-U	
Date Court Files Order	Date:_____		
Serve Notice of Filing Order & Right to Appeal	Within 14 days	GAC 9-U	
File Inventory	Within 60 days of appointment	GAC 13	
Serve annual notice of right to restoration to capacity	Within 30 days of annual anniversary	GAC 10-U	
File Annual Report	Within 30 days of annual anniversary	GAC 14	
File affidavit of mailing of annual notice of right to petition/annual report	Shortly after or with annual filings	GAC 3-U	
Petition for allowance of Annual/Final account	At least every 5th year, but that varies by county- or when terminating conservatorship	GAC 14	
Schedule hearing	Date:_____	GAC 15-U	
Attend hearing			
File proposed Order		GAC 16-U	
File Receipt for Assets	Asap, upon transfer of assets		
Optional: File petition confirming discharge with Order	Asap, upon transfer of assets		

XI. GUARDIAN/CONSERVATOR, ATTORNEY, COURT FEES

A. COURT FEES

1. Filing Fees: At the time of initial filing of the Petition to establish a guardianship/conservatorship you will be required to pay a filing fee. Check with the County that you are filing the petition in for their current fee schedule.

2. Copies of documents: Copies of documents filed with the Court can be obtained upon request. Check with the County you filed the Petition in for their current fee schedule.

B. HOW TO PAY GUARDIAN OR CONSERVATOR, AND ATTORNEY FEES: Minnesota Statutes section 524.5-502 state that the court may order payment of reasonable fees to be paid from the estate of the ward or protected person, or from the county having jurisdiction over the proceedings if the ward or protected person is indigent, meaning poor. This includes the payment of attorney or health professional fees incurred to establish or maintain the guardianship or conservatorship, and payment of reasonable fees to the guardian or conservator when he or she has rendered necessary services or has incurred necessary expenses for the benefit of the ward or protected person.

A guardian or conservator may petition the court for reimbursement or reasonable compensation when he or she was nominated by the court or by the county adult protection unit because no suitable relative or other person was available to provide guardianship or conservatorship services necessary to prevent abuse or neglect of a vulnerable adult as defined in the Vulnerable Adult Act.

In order to receive an award of fees by the court under this statute, it is necessary to prove, and the court must make, the following findings of fact;

- the person is legally appointed the guardian of the person or conservator of the estate, or of both;
- the services rendered or expenses incurred are necessary;
- the services rendered or expenses incurred are for the benefit of the ward or protected person; and
- reimbursement of expenses must be actual amounts incurred; compensation for services rendered (fees) must be reasonable.

1. For Ward's or Protected Person's with assets: If the ward or protected person has assets, the court may order reimbursement or compensation to be paid for out of the ward's or protected person's estate. This is generally accomplished by including the amount of fees paid and expenses reimbursed on the annual account, and requesting that the court approve the account. It is generally not necessary to file a separate petition with the court for approval of fees.

   For Ward's or Protected Person's who are indigent: If the ward or protected person is indigent, the court may order reimbursement or reasonable compensation from the county having jurisdiction over the guardianship or conservatorship. In this case, in addition to the four findings above, the court must make a fifth finding that the ward or protected person is indigent. Generally, a person is considered indigent when the standard for proceeding in forma pauperis is met. This standard is outlined in Minnesota Statutes section 563.01, subdivision 3, and includes, but is not limited to:

   - A ward or protected person who is receiving public assistance.

- A ward or protected person who is represented by an attorney on behalf of a civil legal services program or a volunteer attorney program based on indigency.

- A ward or protected person whose annual income is not greater than 125 percent of the poverty line established under United States Code, title 42, section 9902(2).

C. WHAT ARE THE PROCEDURES FOR COLLECTING GUARDIANSHIP OR CONSERVATORSHIP FEES?

- Regardless of whether or not the ward or protected person has assets, the guardian or conservator must keep an accurate record of the services performed for the benefit of the ward or protected person. A log should be kept which tracks the date of service, service performed, and the amount of time spent.

- If the ward or protected person is an indigent person, *in forma pauperis* status should be requested from the probate court (discussed later in this section). This is accomplished by filing a petition to proceed *in forma pauperis*, an affidavit supporting the petition, and a proposed order granting *in forma pauperis* status.

  Once *in forma pauperis* status is granted, court costs or fees concerned with the guardianship or conservatorship will be waived. This includes initial filing fees, service of process fees, and costs of certified copies of Letters or other documents. This can be done when establishing the guardianship or conservatorship, or at any time during the course of the guardianship or conservatorship if the ward or protected person becomes indigent at a later date.

- If the ward or protected person is an indigent person and resides in an institution, the guardian or conservator should consult the county financial worker to ask that guardian's or conservator's fees be included in the determination of monthly reductions of five percent of income. The financial worker does not automatically do this; it must be requested. This payment is deducted from the gross income on the calculation sheet, which is sent to the institution. It is the guardian's or conservator's responsibility to actually collect the fees.

- If the ward or protected person has assets, the guardian or conservator of the estate may pay him or herself a reasonable fee out of the assets. Reasonability will be factored upon the difficulty of the case, the experience of the ward or conservator, and the going rate for services in the area. Different counties have different standards to determine reasonability. Remember that the amount of the guardian or conservator compensation will be reported on the annual account, that at a hearing to allow the annual account any interested person has the right to contest the reasonability of the guardian or conservator fees, and the judge is the final arbiter.

  Contact the court administrator for the court's procedures on filing.

  1. Must the Court Order the Payment of Fees? The short answer is, no. The language of Minnesota Statutes section 524.5-502 states that the court may order reimbursement or reasonable compensation. This is a discretionary decision on the part of the court, not mandatory. There is a great difference around the state as to how counties respond to this language.

     Some counties have now requested input at the initiation of the guardianship or conservatorship. If the county is going to be the responsible party for payment of the fees, they are entitled to notice of the initial hearing to establish whether a guardianship or conservatorship is really necessary, that is, that there are no less restrictive alternatives available which will meet the proposed ward's or protected person's needs. Some county adult protection units have

developed "screening teams" in order to screen out petitions where such services are not really necessary.

2. What if Fees are Very High? If the expenses incurred or compensation amount is extraordinarily high, it is possible to ask the court for an order allowing the fees. An *ex parte* petition (a petition filed with the court without a hearing) is usually sufficient. If there is some concern that the county or some other interested person may have an interest in contesting the fees, it is also possible to ask for a hearing on the petition, giving the interested parties notice of the hearing and an opportunity to be heard concerning the reasonability or necessity of the compensation.

D. FILING *IN FORMA PAUPERIS:*

1. What will *In Forma Pauperis* status pay for? *In forma pauperis* status not only excuses payment of attorney, health professional fees incurred in order to establish or maintain a guardianship or conservatorship, and the related court filing fees, but also includes costs for service of process upon the proposed ward or protected person, for costs of certified copies of forms, and photocopy costs. These costs are then absorbed by the court system.

2. What if the Petitioner will not be using an attorney? If a petitioner wants to proceed with a guardianship or conservatorship *pro se*, that is, without using an attorney, or if he or she wants to use a private attorney, and in either case cannot afford court costs, they may file the Affidavit for Proceeding In Forma Pauperis.

3. What forms are needed? To petition for *in forma pauperis*, there are two forms that must be filed at the same time the petitioner files for guardianship or conservatorship. These forms can be obtained at the Court Administration Office.

   i. *Affidavit for Proceeding In Forma Pauperis*. The Affidavit is signed by the petitioner in front of a notary public.

   ii. *Order For Proceeding In Forma Pauperis*. The Order is filled out by the petitioner's attorney, or by the petitioner if proceeding pro se, except for signature by the Judge hearing the case.

APPENDIX A
RESOURCES ON GUARDIANSHIP AND CONSERVATORSHIP

A. **RESOURCE AND REFERRAL SOURCES:** If specific information is needed about available services, entitlements, benefits, rights, etc. for a certain population please contact one of the appropriate organizations listed below.

ADVOCACY

Advocacy Center for Long Term Care
(952) 854-7304

Minnesota Board on Aging
(651) 296-2770 or
1-800-652-9747

Office for Ombudsman for Older Minnesotans
(651) 296-0382 or
1-800-657-3591

ADULT CARE PROGRAMS

Minnesota Adult Day Care Association
763-383-1920

Senior Linkage Line
(Metro Area)
(651)296-2544 or
1-800-333-2433

ADULT PROTECTION

Anoka County (763) 422-7070

Carver County (952) 361-1600

Dakota County (651) 891-7400

Hennepin County (612) 348-8526

Ramsey County (651) 266-4012

Scott County (952) 445-7751

Washington County (651) 430-6457

ATTORNEYS

Attorney who drafted this manual:
Robert A. McLeod (612) 371-3272

Yellow Pages under, "Attorneys," look for:
- Elder Law
- General Practice
- Wills, Estate Planning & Probate

US West Yellow Pages under, **Attorneys Referral & Information,** look for:
- Some communities have "Q&A" listing which lists a phone number for free consumer tips on selecting an attorney. This service provides information in the following areas: How referral service works; benefits of using a referral service; areas of law; questions to ask.

- Lawyer Referral Service

Minnesota Continuing Legal Education
Division of Minnesota State Bar Association (651) 227-8266
or
Non Metro Area Number
1 (800) 759-8840

Minnesota State Bar Association
(612) 333-1183

BILL OF RIGHTS

Patients
Minnesota Statutes section 144.651

Health Care Facilities
Minnesota Statutes section 144.651

Home Care Recipients
Minnesota Statutes section 144A.44

For copies, call
Minnesota Board of Aging:
(651) 296-2770 or
1-800-652-9747

COMPLAINTS

Attorney General's
Consumer Protection Division
(651) 296-3353

Better Business Bureau of Minnesota (651) 699-1111

Minnesota Office of Health Facility Complaints
(651) 201-4201

Medical Insurance Complaints
(651) 296-2488

Health Maintenance Organization (HMO) Complaints
(651) 282-5600

Minnesota Department of Human Rights
(651) 296-5663

DISABILITIES

ARC Minnesota
(651) 523-0823 or
1-800-582-5256

Disability Law Center
(612) 332-1441 or
1-800-292-4150

Minnesota State Council on Disability
(651) 296-6785

Metropolitan Regional Service Center for Deaf and Hard-of-Hearing People
(651) 297-1316

State Services for the Blind
(651) 642-0500

DISEASE/CONDITION ORGANIZATIONS

AIDS Hotline
1-800-342-2437

Alzheimer's Association
(952) 830-0512 or
1-800-232-0851

American Cancer Society
(952) 925-2772

American Diabetes Association
(763) 593-5333

American Heart Association
(952) 835-3300

American Lung Association
(651) 227-8014

American Parkinson Disease Association
1-800-223-2732

Arthritis Foundation
(651) 644-4108

Minnesota Depressive and Manic Depressive Association
(612) 379-7933

National Stroke Association
1-800-787-6537

Minnesota Head Injury Association
1-800-669-6442

MEDICAL ASSISTANCE SERVICES

Anoka County (763) 422-7200

Carver County (952) 361-1600

Dakota County (651) 450-2611

Hennepin County (612) 879-3030

Ramsey County (651) 298-5446

Scott County (952) 445-7751

Washington County (651) 430-6459

Other counties, call local county Economic Assistance Department

FOOD AND NUTRITION SERVICES

Anoka County (763) 422-7200

Carver County (952) 361-1600

Dakota County (651) 450-2611

Hennepin County (612) 879-3351

Ramsey County (651) 298-5351

Scott County (952) 445-7751

Other counties, call local county Economic Assistance Department

Meals on Wheels
Anoka County (612) 780-6751

Carver and Scott (952) 496-2125

Dakota County (651) 455-1560

Hennepin County (612) 870-3660

Ramsey County (651) 266-4006

Washington County (651) 430-2720

Other Nutritional Services
Senior Linkage Line
(651) or 296-2544
1-800-333-2433

FUNERAL INFORMATION

Minneapolis/St. Paul Funeral
Information Bureau
(763) 398-0115

HOSPICE

Minnesota Hospice Organization
(651) 659-0423

HOME HEALTH CARE

Minnesota Home Care Ombudsman
1-800-657-3591

MEDICARE

Medicare (Part A) (800) 330-5935
(800) 352-2762

Medicare (Part B) (651) 884-7171

MENTAL HEALTH

Mental Health Association of Minnesota
(612) 331-6840

Ombudsman for Mental Health and Developmental Disabilities
(651) 757-1800

MISCELLANEOUS

Minnesota Department of Human Services
(651) 296-6117

Protective Services, Volunteers of America MN
612-331-4063

**MONITORING/
COMPANIONSHIP**

Senior Companion/Foster Grandparent Program
(612) 872-1719

Senior Linkage Line (Metro Area)
(651) 296-2544
1-800-333-2433

NURSING HOMES

Nursing Home Ombudsman Project

Nursing Home Residents Advocates

Alliance for Health Care Consumers

State Ombudsman for Long-Term Care
1-800-657-3591

**PRE-ADMISSION SCREENING/
ALTERNATIVE CARE**

Anoka County Public Health Nursing Service (763) 422-6970

Carver County Community Social Services (952) 361-1600

Dakota County Public Health Department (651) 450-2614

Hennepin County Community Health Dept. (612) 348-9030

Ramsey County Social Services Division (651) 298-4332

Scott County Human Services

Washington County Community Services (651) 430-6455

Other counties, call local county Social Services Department

PUBLIC GUARDIANSHIP

Minnesota Department of Human Services (Guardianship Office)
(651) 296-0584

**REHABILITATION/
JOB TRAINING**

Minnesota Division of Rehabilitation Services
(651) 296-5616

RESOURCE ASSISTANCE
Statewide Senior Linkage
(651) 296-2544
1-800-333-2433

Eldercare Locator
1-800-677-1116

Hennepin County Service to Seniors
(612) 348-4500

United Way First Call For Help
(612) 335-5000

**RESPITE CARE
(VOLUNTEER PROGRAMS)**

Anoka County (763) 422-6960

Dakota County (651) 455-1560

Hennepin and Ramsey
(651) 222-3001

Washington County (651) 735-5405

Other counties, call local county Social Services Department

SENIOR COMMUNITY CENTERS

Senior Linkage Line (St. Paul and Minneapolis)
(651) 296-2544 or
1-800-333-2433

**SOCIAL SECURITY
ADMINISTRATION**

Social Security Administration
1-800-772-1213

VETERAN'S ADMINISTRATION

Veteran's Affairs Medical Center
(612) 725-2000

Veteran's Affairs Regional Office and Insurance Center
(612) 726-1454 or
(612) 970-5662
1-800-827-1000

ADDITIONAL INFORMATION

- Guardianship Conservatorship Procedures in Hennepin County - Booklet,
  Hennepin County District Court Probate Division, Free, 612/348-3244

- Guardianship and Conservatorship Duties in Minnesota - Video Tape,
  Department of Human Services, Public Guardianship, 612/296-2160

- Standards of Practice (for Conservators and Guardians) - Manual,
  Minnesota Association for Guardianship and Conservatorship (MAGiC), Free, P.O. Box 14246, St. Paul, MN. 55114

- Guardianship & Conservatorship in Minnesota Fact Sheet Series
  Minnesota Department of Human Services, Public Guardianship Office, 444 Lafayette Road North, St. Paul, MN 55155 651-297-4112 – Free

- Guardianship & Conservatorships, Booklet
  Ramsey County Probate Division, 651-266-8145, Free

APPENDIX B
GLOSSARY OF TERMS

Affidavit
A sworn statement

Appeal
To bring a case before a higher court to review a decision of a lower court.

Bond
A promise by a bonding company, that protects the protected person from mismanagement by the conservator of the estate. In the event of mismanagement, the court may decide that the bond will reimburse the estate for the missing money, and the company that issued the bond can recover the money from the conservator.

Burden of Proof
Responsibility of a party to prove a fact. The amount of proof required varies with the type of case. In guardianship and conservatorship matters, the burden of proof is **clear and convincing evidence.**

Change of Venue
To move the court matter to another county.

Civil Lawsuit
A legal action brought to receive relief for injuries or monetary loss.

Contested
When any party objects to the petition or to the hearing.

Continuance
When the court has agreed to postpone the hearing date.

Co-Conservator (also**, Co-Guardian)**
When more than one person is appointed to serve as a decision-maker.

Conservatorship
A conservatorship exists when a **conservator** is appointed by the court to handle financial matters for another person. The person for whom a conservator handles financial affairs is called a **protected person** or **protected person**.

Proposed Protected Person or **Proposed Ward** or **Respondent**
Is the person for whom appointment is sought.

Guardianships are only appointed to protect the personal well-being of the Ward.

Conservatorships are appointed to protect the finances of the protected person.

Estate
A person's income, assets, real estate, or any other financial holdings.

Guardianship
A guardianship exists when a **guardian** is appointed by the court to handle personal decisions for another person. The person for whom a guardian handles personal affairs is called a **ward**.

Hearing
A court proceeding that is conducted before a judge or referee, which allows a person or persons to sufficiently present their case in a meaningful manner.

Incapacity
The inability to physically or mentally handle his or her own property or personal affairs.

In Forma Pauperis (IFP)
Minnesota law states that the court may authorize conservatorship (guardianship) proceedings to proceed **in forma pauperis**, or, without payment of court costs for indigent people. Another law states that counties may be responsible for paying guardian, conservator, attorney, or health care professional fees to establish or maintain conservatorships (guardianships) for indigent persons.

Indigent
A person with little money or property.

Inventory
A document that describes all assets of the protected person.

Less Restrictive Alternatives
Alternatives to the appointment of a conservator (guardian) must be explored and ruled out prior to petitioning for the appointment of a conservatorship (guardianship).

Notarize
Process where an authorized public officer (the **notary**) verifies the signature on a document. The signature must take place in the presence of the notary.

Oath
A sworn promise to perform and act faithfully and truthfully.

Order to Show Cause
An order requiring a party to appear and show why a previous order has not been complied with, or why a proposed order should not be made.

Petition
A legal document requesting action or relief from the court.

Petitioner
The person who brings a petition before the court.

Private Conservatorship (**Guardianship**)
An individual person or persons is appointed by the court to serve as conservator (guardian).

Protected Person
A person for whom a conservator was appointed.

Public Conservatorship (**Guardianship**)
Sometimes called state conservatorship or guardianship, a procedure where the Commissioner of the Department of Human Services is appointed by the court.

Referee
A judicial officer who is appointed by a judge. A referee is able to preside over matters as a judicial officer, and recommends decisions or orders, which are signed, or ordered, by a judge.

Emergency Conservatorship (Guardianship)
In emergency situations where the process of petitioning for a general conservatorship (guardianship) is reasonably expected to cause danger to the proposed protected person's (ward's) personal safety or financial security, an emergency conservatorship (guardianship) may be requested. In this instance, the requirement of providing a minimum of two weeks notice to the proposed protected person (ward) and family members is waived. An emergency conservatorship (guardianship) is granted for a specific, usually short, duration.

Subpoena
An order compelling a witness to appear and testify before a court.

Substitute Decision Maker:
A person acting, either informally as a family member or friend, or formally, as a proxy, agent, guardian or conservator, on behalf of an incapacitated person in making relevant decisions regarding personal and medical issues and/or financial issues.

Technological Assistance
Technological assistance that may be used to assist the ward or protected person may include, but is not limited to: direct deposit/withdrawal; computer assisted communication; computer controlled wheelchairs; seeing eye dogs; any other form of applied technology that can assist the ward or protected person retain his/her independence.

Testimony
Oral statements made under oath at a legal proceeding.

Witness
1. A person called to testify in a legal proceeding.
2. A person who witnesses the signing of a legal document.