

Guardianship/Conservatorship: What can a guardian/conservator do?

Guardians and conservators are appointed by the court to make personal and financial care decisions on behalf of another (the “ward”). However, the fact that one has been appointed a guardian or conservator does not mean that their authority to make decisions is necessarily unlimited. Courts are legally obligated to consider the least restrictive alternatives before issuing a guardianship or conservatorship that would grant full decision-making authority.

To determine the level of authority granted to the guardian or conservator, look to the letters of appointment. These are proof that the person claiming to be the guardian or conservator has, in fact, been appointed to serve that role. These letters also detail the level of responsibility and authority that has been granted. Unless the court limits the role of the guardian or conservator, the duties are as followed:

Guardian:

- Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward’s potential;
- Taking reasonable care of the ward’s clothing, furniture, vehicle and other personal effects;
- Assisting the ward in developing maximum self-reliance and independence;
- Ensuring the ward receives necessary emergency medical services;
- Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia is included, if the anesthesia is provided within the scope of the health care practitioner’s scope of practice.

Conservator:

- To collect, receive, receipt for any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator;
- To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market;
- To vote at corporate meetings in person or by proxy;
- To receive additional property from any source;
- To continue to hold any investment or other property originally received by the conservator, and also any increase thereof, pending the timely filing of the first annual report.

Even if granted a full guardianship or full conservatorship, there are still certain decisions that require court approval. Although, this court approval may be obtained at the time the guardianship or conservatorship is established, often the guardian or conservator must go back to court to seek this authority at a later date. Following are the types of duties which require further court approval:

Guardian

- Change the ward's permanent residence to one that is more restrictive of the ward's liberties than the current residence;
- Arrange the provision of major elective surgery or any other nonemergency major medical procedure; and
- Consent to the withholding or withdrawal of life-sustaining procedures.

Conservator

- To invest the funds belonging to the ward;
- To execute leases;
- To make payments to, or for the benefit of, the ward in any of the following ways:
 - Directly to the ward;
 - Directly for the maintenance, welfare and education of the ward;
 - To the legal guardian of the person of the ward; or
 - To anyone who at the time shall have the custody and care of the person of the ward.
- To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable;
- To compromise or settle any claim by or against the ward or the conservator; to adjust, arbitrate or compromise claims in favor of or against the ward or the conservator;
- To make an election for the ward who is a surviving spouse;
- To exercise the right to disclaim on behalf of the ward; and
- To do any other thing that the court determines to be in the best interests of the ward and the ward's estate.

For more information on the Long-Term Care Ombudsman Program or to reach a Local Long-Term Care Ombudsman, please call 866-236-1430.

The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare, and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems, and providing advocacy with the goal of enhancing quality of life and care.