

When Should I Use the Court To Become My Relative's Guardian or Conservator?

by Louis Levenson

Making the decision to seek a guardian or conservator for a family member or loved one is always hard. Many are unsure of what options are available under the law. Some are concerned about upsetting their loved one by raising the issue before it is very obviously needed. Most wait too long.

A guardian is a Court appointed person who is responsible for personal affairs of an adult or a minor who is unable to properly care for him or herself. A conservator is responsible for managing the financial affairs for such individuals. A guardian or conservator is appointed by a judge only after the judge determines that the person is no longer capable of managing personal or financial affairs, or both. A guardian and conservator can be different people or the same person, whichever is most appropriate.

Probate judges in the United States have the power to make the final determination as to whether your loved one needs to have a guardian or conservator appointed. To appoint a guardian or conservator the Court must find that because of mental or physical impairment, an individual is unable to effectively respond to people, events, and environments to such an extent that they do not have the capacity to meet the essential requirements for caring for themselves for their health, care, safety, habilitation, or therapeutic needs, to manage their property or financial affairs, or to provide for support of their legal dependents without the help of a conservator.

Guardians and conservators owe a special duty of care, called a "fiduciary duty," to act in the best interests of the minor child or incapacitated adults they represent. Conservators and guardians are subject to court supervision, which provides a powerful safeguard for an incapacitated adult and their property. Conservators and guardians must do what is best for the family member, not what is best for the conservator or guardian.

To prevent conservators from mismanaging the property or otherwise taking advantage of the people they are helping, Courts require conservators to provide periodic reports detailing their actions, and to provide an insurance bond. Courts may also require the conservator to seek permission before making major decisions, such as selling real estate (for a financial conservator) or terminating life-support (for a conservator in charge of health care decisions).

Legal disputes in this area can arise in a variety of ways. Sometimes family members and friends disagree over whether the court should appoint a guardian or conservator, or they disagree over who should be appointed, or both. Sometimes the incapacitated adult objects to the appointment of a guardian or conservator. They may say "I'm not crazy" and "I don't need anyone to tell me what to do".

When well managed, conservatorships and guardianships can offer appropriate and practical protection for vulnerable individuals, and peace of mind for their families and friends. It is critical that any conservatorship and guardianship is thoughtfully and capably implemented and maintained by a skilled attorney to ensure that the best interests of the family member is protected.

We therefore urge you to discuss these sometimes tricky issues openly and make known your wishes to legal counsel who handle these kinds of cases.