



Guardianships & Conservatorships

A guardianship or conservatorship is a legal mechanism that grants a designated adult legal power to make decisions for another person, one who is considered unable to make decisions himself or herself. In the case of a minor child, generally guardianship or conservatorship will terminate when the child turns 18 or, in some states, upon marriage if the child marries before age 18.

There are also different types of guardianship or conservatorship, each of which grants the guardian or conservator different powers. A "natural guardian" generally refers to a parent. In most cases, a natural guardian has custodial rights but only limited rights to control the assets of a child. "Guardianship of the person" is similar to custody. A "guardian ad litem" is often appointed only for the limited purposes of litigation. "Guardian of the estate" or "guardian of the property" or "conservator" usually refers to someone appointed to manage assets of and make financial decisions for the person deemed incapable. When your child turns 18, he or she may need a guardian or conservator to manage some aspects of his or her life.

General Conservatorship or Guardianship of the Person and Estate

This type of conservatorship or guardianship typically provides full decision-making powers—with respect to finances, medical decisions, living arrangements, etc.—for a person deemed to be unable to make decisions or perform necessary tasks on his or her own.

Limited Conservatorship or Guardianship

Powers of a conservator or guardian can often be limited to reflect the needs of the individual who is incapacitated or disabled, and laws in a number of states specifically provide for the appointment of a limited conservator or guardian for certain individuals with developmental disabilities.** These types of arrangements are often used in special needs cases. A limited conservator or limited guardian is appropriate for individuals whose conditions impair their ability to care for themselves or their property, but not to the extent that a general conservatorship or full guardianship is required. For example, California law provides that a limited conservator may be appointed only:

- For adults who have a developmental disability.
- When a court finds that the conservatee lacks the capacity to perform some, but not all, of the tasks necessary for personal needs or to manage financial resources.

A limited conservatorship or limited guardianship encourages maximum self-reliance and independence for the adult with developmental disabilities by giving the conservator or guardian power only over those activities that the individual is unable to handle.

Alternatives to Guardianship and Conservatorship

Depending on personal circumstances, avenues other than guardianship and conservatorship relationships may exist that can help an individual feel more independent and minimize legal involvement. For example, if your child only needs assistance managing his money, he may be eligible for help through the Supplemental Security Income program (SSI) offered by the Federal government. If appropriate, an SSI Representative Payee can be designated to receive and disburse SSI money on behalf of your child, a function that might otherwise be performed by a court-appointed guardian. The Representative Payee must make an annual accounting to the Social Security Administration on how funds are spent.

Another option is Durable Power of Attorney, whereby the individual who has a disability allows certain decisions, such as medical, property, or living situation, to be made by another person, on his behalf, without court intervention. A Special Needs Trust can also be effectively used by a trustee to manage the finances and personal effects of a person who has a disability, rather than a court-appointed general guardianship or conservatorship.

Letter of Intent

A letter of intent is another important document parents should have. Although not legally binding, this document provides direction for the person or persons who will care for your child or other dependent with special needs. The letter should detail medical history, daily care needs, housing and services, as well as your specific wishes and expectations as they relate to your child's future. It is a working document for the future caregiver to follow.

One of the best ways to get started developing this letter is to think of a day in the life of your child. What are his or her habits? What are his or her routines? What makes him or her upset? Share the letter of intent with the person(s) who will be caring for your child. Discuss it. If you aren't comfortable that they share your views or that they are willing to respect them, you may want to reconsider your choice. A letter of intent is often the most important part of the plan.