

# **Guardianship & Conservatorship General Information Pamphlet Questions and Answers**



## **What is the Purpose of a Guardianship or Conservatorship?**

The purpose of a guardianship or conservatorship is ordered by a court when a person cannot manage their own affairs. Guardianships are appointed to assist with personal needs; whereas Conservatorships are for financial affairs.

The person who needs help does not have to be incompetent, meaning the person cannot make their own decisions.

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## **What are the Difference between Guardianship and Conservatorship?**

- In a guardianship the person who needs help is called the ward. The person helping is called the guardian. A guardian is appointed by the court to make the personal decisions for the ward.
- In a conservatorship the person who needs help is called the protected person. The person who helps is the conservator. A conservator is appointed to make financial decisions for the protected person.

In some case, the court will name both a guardian and a conservator to help.

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## **What Power does a Conservator or Guardian have?**

A guardian has power over the person. They have the authority to make decisions on behalf of the ward about such things as where to live, medical decisions, education, etc.

A conservator has power over the estate. They take care of money and property. The conservator typically has the power to enter into contracts, pay bills, invest assets, and perform other financial functions for the protected person. They must, on a routine basis, as determined by the court report what money came in, how it was spent and why. The conservator can be held responsible for doing the wrong things with the money.

Conservators and guardians must act in the best interest of the ward or protected person. For example: a guardian cannot agree to medical care that they know is against the protected person's beliefs. They cannot limit the protected person's freedom unless it is needed to protect them from danger.

## **How is a Guardianship or Conservatorship Made?**

A person files a guardianship petition to ask the court to name them or another person as guardian for a person who needs help. The person who would be the ward or protected person must be given notice of the case. They have the right to an attorney. The person filing the case must show “clear and convincing” evidence that a guardianship or conservatorship is needed. This can be hard if the person who needs help does not agree.

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## **Can a Guardianship or Conservatorship End?**

Yes. The court can end the guardianship or conservatorship, if the protected person or ward shows the court that they no longer need help or protection. Usually, a doctor or social worker needs to testify that the ward can handle his or her own affairs. Then the court supervision ends and the ward or protected person is free to make their own decisions.

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## **What is the Difference between Conservatorship and Power of Attorney for Financial Affairs?**

- Conservatorships are appointed by a court. The court oversees their actions. They make the decisions and the protected person loses power to make decisions.
- Power of attorney is when an individual gives another person the legal authority to act for them in legal and business matters. A power of attorney is a written consent signed by the individual. A power of attorney is not court ordered and the court does not check on the actions of the person acting in this capacity.

### **NOTE:**

- The Mille Lacs Band Court combines the Guardianship and Conservatorship in one form. The Form is titled: ADULT GUARDIANSHIP PETITION OR MINOR GUARDIANSHIP PETITION.
- When completing this petition, it is necessary to include names and full addresses of caretakers of the proposed ward or protected person. The court cannot process incomplete petitions.
- The petitioner is not required to have an attorney; however it may be helpful.
- There is not fee when filing a Petition for Guardianship of a minor child or adult.
- If you have any question, contact the Mille Lacs Band Tribal Court at 320-532-7400.