

Determine Type of Guardianship/Conservatorship

You will need to decide what type of guardianship/conservatorship is needed, because this affects which petition you select and the requirements for each. The two most common types are a regular permanent guardianship/conservatorship and an emergency guardianship/conservatorship. Under the old code, there was a process for filing for an emergency guardianship that automatically became a permanent guardianship, this no longer exists. You must file two separate petitions, and pay separate fees for each. This is a good reason to go ahead and file for a guardianship rather than wait for a crisis to motivate the filing. The critical difference between the two are the circumstances surrounding the proposed ward. Under the emergency petition the time line is condensed for everyone. The hearing must be held within a very short time frame, which means everybody involved is working at an accelerated pace. Because of this, the requirements for emergency are fairly stringent, and usually require that serious bodily harm is pending or gross waste of assets, unless a guardian or conservator can intervene. If you are facing an emergency situation, you should consider hiring an attorney. While there are many similarities, there are key differences. This guide focuses on the regular petition to establish a guardianship and/or conservatorship for an incapacitated adult.

Guardianship, Conservatorship, or Both

Guardianship and conservatorship are different creatures, though some features overlap, the roles and responsibilities are different. If you have not done so yet, now is a good time to review the “Rights and Responsibilities” section of this book. The guardian does not need to post a bond, and is responsible for the health and safety of the ward. The guardian may have to move the ward to a safer living situation, or take away the car keys. The conservator must post a bond as set by the court and must actively ensure that the ward’s resources are cared for and applied to the ward’s benefit. The guardian is responsible for personal status reports to the court. The conservator must collect all assets, inventory them, report to the court, and develop a plan for the proper management of the assets.

If the ward has no assets, do not apply for conservatorship. It is not necessary. Simply petition to be named guardian. If the only asset is income from social security, you should look first into whether you can be named “representative payee” for the benefits, rather than being named conservator. Check with the Social Security caseworker.

I have often run into people who want to be named guardian so their ward will comply with medical treatment, such as taking their pills. Unfortunately, a guardianship may not accomplish this goal. If the ward does not want to take their pills, there is no court order from the probate court that will accomplish this. Guardianship will allow you to speak with healthcare providers, make decisions on the ward’s behalf, determine where the ward lives and what activities he/she participates in. If you want to move the ward out of state, or to another county, you will have to ask for those additional powers in your petition.

Guardian has the right to consent to treatment, but the ward retains the right to refuse treatment