

INSTRUCTIONS

Petition for Guardian and/or Conservator of an Adult

Important Notices and Resources

The Court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

Have questions about court forms or instructions?

- Visit www.MNCourts.gov/SelfHelp
- Call the Statewide Self-Help Center at 651-435-6535

Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit www.MNCourts.gov/Find-a-Lawyer.aspx

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact court administration or call the Minnesota State Law Library at 651-297-7651.

Forms You May Need

- *Petition for Appointment of Guardian and/or Conservator* (GAC 5-U);
- *Notice of Hearing and Notice of Rights* (GAC 6-U);
- *Acceptance of Appointment by Conservator/Guardian* (GAC 1-U);
- *Letters of Guardianship/Conservatorship* (GAC 4-U);
- *Order Appointing Guardian and/or Conservator* (GAC 8-U)
- *Affidavit of Service* (GAC 2-U);
- *Notice Regarding Background Check Requirements* (GAC104);
- *Affidavit Regarding Background Study* (GAC102);
- *DHS Background Check Form* (GAC103);
- *Attachment to Petition for Appointment of Guardian and/or Conservator* (GAC502)

Forms are available online at <https://mncourts.gov/GetForms.aspx?c=21#subcat49>.

What You Need to Do

1. Complete the court forms, following all of the steps in these instructions.
2. File the completed forms with Court Administration.
3. Arrange for service.
4. Appear at the hearing. Each “step” here is described in more detail below.

General Information about Guardianship/Conservatorship

Recommendations for the Proposed Guardian and/or Conservator

It is recommended that the proposed Guardian and proposed Conservator complete the following:

- Read the *Guardianship and Conservatorship Manual* (GAC101), which is available online at <https://mncourts.gov/GetForms.aspx?c=21&f=442>.
- Watch the Conservatorship/Guardianship Education Video, which is available on the Guardianship and Conservative Help Topic webpages:
 - <https://mncourts.gov/Help-Topics/Guardianship.aspx>
 - <https://mncourts.gov/Help-Topics/Conservatorship.aspx>
- Determine whether a Background Study needs to be completed. Read the *Notice to Proposed Guardians/Conservators Regarding Background Check Requirements* (GAC104) to determine if you need to complete a background study.
 - If you have completed a background study within the last 5 years, fill out the *Affidavit Regarding Background Study* (GAC102), and attach the most recent copy of the DHS background study along with the *Affidavit*.
 - If you need to complete a background study, fill out the *DHS Background Check Form* (GAC103).

Step 1
Fill Out *Petition for Appointment of Guardian and/or Conservator*

The Caption

State of Minnesota	District Court
County of: _____	Court File Number: _____
Judicial District: _____	Case Type: <u>Guardianship/Conservatorship</u>
 In Re:	
<input type="checkbox"/> Guardianship	
<input type="checkbox"/> Conservatorship	
of:	

Petition for Appointment of <input type="checkbox"/> Guardian and/or <input type="checkbox"/> Conservator (GAC 5-U)	

The top of the first page of the form is called the “caption.”

- A. You will need the county where the Respondent lives, and the judicial district, for the top of the form. Leave the “Court File Number” line blank.
- B. Next, check whether you are asking the court to establish a guardianship or a conservatorship, or both. On the blank line, fill in the name of the Respondent.
- C. Then check the box(es) to show what you are asking for – a guardian, a conservator, or both. The boxes you check at “B” and “C” must match.

Paragraphs 1-5 (Basic Information)

If a paragraph does not apply, you can answer “not applicable” or “NA.” For example, if the Respondent is not married, then you can answer “not applicable” or “NA” for paragraph #4a.

Which paragraphs to answer next?

It depends on whether you are asking the Court to appoint a Guardian, a Conservator, or both.

- If you are asking the Court to appoint a Guardian, then answer paragraphs #6 through #20, then the REQUESTS section.
- If you are asking the Court to appoint a Conservator, then answer paragraphs #21 through #36, then the REQUESTS section.
- If you are asking the Court to appoint BOTH a Guardian and a Conservator, then answer ALL of the paragraphs in this form.

FOR PROPOSED GUARDIANS

Paragraphs #6 - #20 – fill out these paragraphs only if asking the Court to appoint a Guardian.

Read through the list at paragraph #9 very carefully. It might also be helpful to read the list of a guardian’s powers and duties in [Minn. Stat. § 524.5-313\(c\)](http://revisor.mn.gov/statutes/cite/524.3-313) (revisor.mn.gov/statutes/cite/524.3-313).

You need to answer paragraphs #12 - #20 for each proposed Guardian and any proposed Co-Guardian. There is room on the form to answer only for 1 guardian; you will need to fill out the *Attachment to Petition for Appointment of Guardian and/or Conservator* (GAC502) for each co-guardian.

FOR PROPOSED CONSERVATORS

Paragraphs #21 - #36 – fill out these paragraphs only if asking the Court to appoint a Conservator.

Read through the list at paragraph #24 very carefully. It might also be helpful to read the list of a conservator’s powers and duties in [Minn. Stat. § 524.5-417\(c\)](http://revisor.mn.gov/statutes/cite/524.5-417) (revisor.mn.gov/statutes/cite/524.5-417).

You need to answer paragraphs #28 - #36 for each proposed Conservator and any proposed Co-Conservator. There is room on the form to answer only for 1 conservator; you will need to fill out the *Attachment to Petition for Appointment of Guardian and/or Conservator* (GAC502) for each co-conservator.

REQUESTS

In this section, you are asking the Court to schedule a hearing, and to order the Court to appoint a specific person as the Guardian and/or the Conservator.

REQUESTS	
<p>Petitioner asks the Court to schedule hearing on this petition and, after the hearing, issue an order:</p>	
<input type="checkbox"/>	Appointing _____ Guardian of Respondent with the powers and duties described in statements at #9 above.
<input type="checkbox"/>	Appointing _____ as Co-Guardian of Respondent with the powers and duties described in the statements at #10 above.
<input type="checkbox"/>	Appointing _____ as Conservator of Respondent with the powers and duties described in the statements at #24 above.
<input type="checkbox"/>	Appointing _____ as Co-Conservator of Respondent with the powers and duties described in the statements at #25 above.

Signature Block

After reading through the petition to make sure it is accurate and complete, date and sign the petition on the last page. Then print your name and contact information under your signature.

Step 2

Fill Out *Acceptance of Appointment* (GAC 1-U)

The Caption

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ Judicial District
	PROBATE DIVISION
	Court File No. _____
In Re: <input type="checkbox"/> Guardianship <input type="checkbox"/> Conservatorship of	
	Acceptance of Appointment
_____	<input type="checkbox"/> Professional Individual <input type="checkbox"/> Individual
	<input type="checkbox"/> Corporation

A. You will need the county and judicial district for the top of the form.

- B. Next, check whether the case is a guardianship or a conservatorship, or both. On the blank line, fill in the name of the Respondent.
- C. Then check the box to show whether you are a professional guardian (“professional individual”), an individual, or an employee of a corporation.

For Individuals (including professional individuals)

Fill out the section that is marked “By Individual.”

By Individual:

As a condition to receiving letters, I, Your Full Name, the appointed Guardian Conservator of _____, verify that I understand the duties and responsibilities required of me in this role. I hereby accept my appointment and will fully and faithfully perform all of my duties according to law and submit to the jurisdiction of the Court in any proceeding relating to this person subject to guardianship and/or person subject to conservatorship that may be brought by the court or any person interested in the affairs of the person subject to guardianship and/or person subject to conservatorship.

I have watched the Guardianship/Conservatorship Educational Video. _____ (initial here)

I am a professional conservator as defined by Minn. Stat. § 524.5-102, subd. 13c.

1. List your full name on the first blank.
2. Check whether you are the proposed Guardian, Conservator, or both. List the Respondent’s name on the second blank line.
3. Be sure to watch the educational video mentioned earlier in these Instructions. After doing so, check the box letting the court know you have watched it, and then put your initials in the blank.
4. *If you are a professional conservator*, check the last box in this section.

For Corporations

Fill out the section that is marked “By Corporation.”

By Corporation:

_____ (“Corporation”) is a corporation under the Laws of the State of Minnesota. As a condition to receiving letters as Guardian Conservator, the Corporation (1) accepts the duties of such appointment, (2) agrees to be bound by Minnesota law relating to guardians and conservators, (3) submits to the jurisdiction of the Court in any proceeding relating to this person subject to guardianship and/or person subject to conservatorship that may be brought by the court or any person interested in the affairs of the person subject to guardianship and/or person subject to conservatorship, and (4) employees of the corporation directly responsible for carrying out the duties and responsibilities of a guardian and/or conservator have watched the Guardianship/Conservatorship Educational Video and understand the duties and responsibilities of the role of guardian and/or conservator.

The corporation has authorized this acceptance to be signed in the corporate name.

1. List the name of the corporation.
2. Check whether the corporation is the proposed Guardian, Conservator, or both.

SIGNATURE BLOCK

When you sign the *Acceptance*, you are signing under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. By signing under penalty of perjury, you are stating that the information in the *Acceptance* is true to the best of your knowledge.

Date and sign the *Acceptance*. Then write the names of the county and state you are in when you signed it and include your contact information below your signature.

Step 3

Fill Out Order Appointing Guardian and/or Conservator (GAC 8-U)

In Step 3, you will fill out as much of the proposed Order as you can, based on the information you gave in the *Petition*.

The Caption

State of Minnesota	District Court Probate Division
County of _____	Judicial District: _____ Court File No. _____ Case Type: Guardianship/Conservatorship
In Re: <input type="checkbox"/> Guardianship <input type="checkbox"/> Conservatorship of _____	Order Appointing: <input type="checkbox"/> Guardian <input type="checkbox"/> Conservator

- Fill out the caption with the same information you included on the other forms.
- Check which boxes apply (Guardianship/Guardian, Conservatorship/Conservator, or both).

This matter came on for hearing before the district court on _____ on a petition seeking appointment of a Guardian Conservator for the Respondent named above. Petitioner appeared personally with the Petitioner's attorney, _____. The Respondent appeared personally with Respondent's attorney, _____. The matter, having been considered by the Court, and the Court being duly advised in the premises now makes the following:

- List the date of the hearing, if you know it.
- Check one or both boxes, like you did in the caption.
- List the name of the Petitioner's attorney, and the name of the attorney for the Respondent.

Findings of Fact (#1 - #7)

Fill out this section based on what you put in the *Petition*.

- Check the box for "Guardianship," "Conservatorship," or both, and provide the facts that support your choices.

2. This question asks about the less restrictive means you've tried. The first paragraph under #2 is about guardianships; the second paragraph is about conservatorships.
3. Question #3 asks about the powers. Be sure to check the boxes for the same powers as you did in the *Petition*.
4. Check the box if the person subject to guardianship/conservatorship *is not* a patient of a state hospital, etc.
5. Check the box for "Guardian," "Conservator," or both.
6. Fill out #6 to the best of your ability.
7. Check one or both boxes, depending on what you have asked for in the *Petition*.

Conclusions of Law

1. You do not have to do anything at #1.
2. For #2, check the box or boxes, depending on what you're asking for. The name of the person subject to guardianship/conservatorship goes on the blank line for whichever box you checked.

Order

Fill out this section with the same information you included in the *Petition* and the "Findings of Fact" section of the *Order*.

Leave the signature and date lines blank.

This document will be a *Proposed Order* until approved by the Court.

Step 4

Fill Out *Letters of Guardianship/Conservatorship (GAC 4-U)*

Fill out the caption has you did on the other forms.

If asking for a Guardian:

1. Fill in the name of the proposed Guardian on the first line in this section.
2. Fill in the name of the Respondent on the second line in this section.
3. Leave the rest of the section blank.

If asking for a Conservator:

1. Fill in the name of the proposed Conservator on the first line in this section.
2. Fill in the name of the person subject to conservatorship.
3. Leave the rest of the section blank.

This document will be the *Proposed Letters* until approved by the Court.

Step 5

Fill Out *Notice of Hearing and Notice of Rights* (GAC 6-U)

Fill out the caption as you did on the other forms.

Check the first box if you are asking the court to appoint a Guardian. Include the name of the proposed Guardian.

Check the second box if you are asking the court to appoint a Conservator. Include the name of the proposed Conservator.

On the third line, include the name of the Respondent.

Under “Respondent’s Rights and Obligations” paragraph, include Court Administration’s phone number. You can find that information online at <https://mncourts.gov/Find-Courts.aspx>.

When you file the documents with Court Administration, court staff will fill out the bottom part of the *Notice of Hearing and Notice of Rights* form and return it to you for service.

This document will be a *Proposed* Notice of Hearing and Notice of Rights until approved by the court.

Step 6

Background Study

Read the *Notice to Proposed Guardians/Conservators Regarding Background Check Requirements* (GAC104) to see if a background study needs to be completed.

If a background study is required, *and the proposed Guardian/Conservator has completed a background study within the last 5 years*, fill out the *Affidavit Regarding Background Study* (GAC102), include a copy of the most recent DHS background study, and file them with Court Administration.

NOTE: If filing paper documents, you must use the Cover Sheet for Non-Public Documents Form 11.2 when filing a background study. Filers who are using eFS to submit their court documents must identify and designate their filings as required in Minn. Gen. R. Prac. 11.02 and 14.06.

The failure to use Form 11.2 may result in your document being rejected by court administration, being available to the public, stricken from the court record, and sanctions from the court.

See Rule 11 of the Minnesota General Rules of Practice for more information about how to file documents containing social security numbers, financial account numbers, “financial source documents” and other non-public documents.

Form 11.2 can be found at www.mncourts.gov/forms under the court forms category of “Confidential Information” and is court form number CON111 and CON112.

If a background study is required, fill out the *DHS Background Check Form* (GAC103). Be sure to read the instructions with GAC103.

Step 7 File with Court Administration

You will need to file the following forms with Court Administration in the county where the Respondent lives:

- *Petition for Appointment of Guardian and/or Conservator* (GAC 5-U);
- *Acceptance of Appointment* (GAC 1-U);
- *Proposed Order Appointing Guardian and/or Conservator* (GAC 8-U);
- *Proposed Notice of Hearing and Notice of Rights* (GAC 6-U);
- *Proposed Letters of Guardianship/Conservatorship* (GAC 4-U);
- **After service is completed:** *Affidavits of Service* (GAC 2-U).

Note: a “proposed” form (Order, Notice, or Letter, for example), for purposes of eFiling, means a form not signed by a judicial officer.

If a background study is required, you may also need to file:

- *Affidavit Regarding Background Study* (GAC102).

Filing Fee

There will be a fee when filing these documents. If the Respondent cannot afford the filing fee, you can apply for a fee waiver based on the Respondent’s financial situation. The fee waiver forms are online at www.mncourts.gov/forms (choose the “Fee Waiver / In Forma Pauperis” category and look for **IFP401** and **IFP402**).

Step 8 Make Copies, Serve Copies, and File *Affidavits of Service*

NOTE: Originals must be filed with Court Administration. Make a copy of everything you file for your records.

Make enough copies for yourself, the Respondent, and any interested persons that need to be served.

Serving Interested Persons

You must serve the *Notice of Hearing and Notice of Rights* and the *Petition for Appointment of Guardian and/or Conservator* on all interested persons, including the head of the facility if the Respondent is a patient of a state hospital, regional center, or any state operated service.

These documents must be personally served on each interested person at least 14 days before the hearing, or mailed by first class mail at least 17 days before the hearing. NOTE: papers *cannot* be

served on a legal holiday as defined in Minn. Stat. § 645.44, subd. 5 (<https://www.revisor.mn.gov/statutes/cite/645.44#stat.645.44.5>).

After you served all of the interested persons, fill out the *Affidavit of Service* form (GAC 2-U).

Serving the Respondent

Ask Court Administration if a “Court Visitor” will be appointed to meet with the Respondent.

- *If a Court Visitor is appointed*, then the Court Visitor will serve the Respondent with the papers.
- *If no Court Visitor is appointed*, then you are responsible for arranging personal service of the *Notice of Hearing and Notice of Rights* and the *Petition for Appointment of Guardian and/or Conservator* on the Respondent at least 14 days before the hearing. NOTE: papers *cannot* be served on a legal holiday as defined in Minn. Stat. § 645.44, subd. 5 (<https://www.revisor.mn.gov/statutes/cite/645.44#stat.645.44.5>). You cannot be the one to personally serve the Respondent. The person who hand-delivers the papers will need to fill out the *Affidavit of Service* (GAC 2-U).

What to Expect Next...

There will be a hearing. To prepare for the hearing, it is a good idea to look at the court rules. You can visit a law library (<https://mncourts.gov/Help-Topics/Law-Libraries.aspx>) to read the court rules. It is important to be on time and be prepared for the hearing.

Please visit the “Representing Yourself in Court” Help Topic online at <https://mncourts.gov/Help-Topics/Representing-Yourself-in-Court.aspx>.

Glossary

Affidavit: A statement made under penalty of perjury (Minn. Stat. § 358.116).

Anniversary Date: The date (month-day-year) that the Letters of Guardianship and/or Conservatorship were issued (signed by the judicial officer) is the *anniversary date*. This date remains fixed from year to year and is the date that is used to determine the period-ending date for filing annual reports and other required documents.

Bond: A promise by a bonding company that protects the person subject to conservatorship from mismanagement by the conservator. In the event of mismanagement, the court may decide that the bond will reimburse the estate for the missing money, and the company that issued the bond can recover the money from the conservator.

Burden of Proof: Responsibility of a party to prove a fact. The amount of proof required varies with the type of case. In guardianship and conservatorship cases, the burden of proof is **clear and convincing evidence**.

CAAP: The Conservator Account Auditing Program (CAAP) provides centralized oversight of conservator accounts.

CARP: The Conservator Account Review Program (CARP) reviews inventories and accounts of conservators not subject to audit.

Contested: When any party objects to the petition or to the hearing.

Continuance: When the court has agreed to postpone the hearing date.

Co-Conservator (also, Co-Guardian): When more than one person is appointed to serve as a decision-maker.

Conservator: A person appointed by the court to make financial decisions for the protected person. A conservator typically has the power to enter into contracts, pay bills, invest assets, and perform other financial functions for the person subject to conservatorship.

Conservatorship: A conservatorship exists when the court appoints a **conservator** to handle financial matters for another person. The person for whom a conservator handles financial affairs is called a **person subject to conservatorship**. Conservatorships are appointed to protect the finances of the person subject to conservatorship.

Emergency Conservatorship (Guardianship): In emergency situations where the process of petitioning for a general conservatorship (or guardianship) is reasonably expected to cause danger to the respondent's personal safety or financial security, an emergency conservatorship (or guardianship) may be requested. In this instance, the requirement of providing a minimum of two weeks' notice to the respondent and interested persons is waived. An emergency conservatorship (or guardianship) is granted for a specific, usually short, duration.

Estate: A person's income, assets, real estate, or any other financial holdings.

Guardian: The person appointed by the court to make personal decisions for the person subject to guardianship, such as where to live, medical decisions, training and education, etc.

Guardianship: A guardianship exists when a **guardian** is appointed by the court to handle personal decisions for another person. The person for whom a guardian handles personal affairs is called a **person subject to guardianship**. Guardianships are only appointed to protect the personal well-being of the person subject to guardianship.

Hearing: A court proceeding that is conducted before a judge or referee which allows a person or persons to present their case.

Incapacitated person: An individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance.

In Forma Pauperis (IFP) (Fee Waiver): Minnesota law states that the court may authorize a case to proceed **in formal pauperis**, without payment of court costs for those who qualify based on current

federal poverty guidelines. See Minn. Stat. § 563.01. The court will consider the income and assets of the person subject to guardianship. Another law states that counties may be responsible for paying guardian, attorney, or health care professional fees to establish or maintain guardianships. See Minn. Stat. § 524.5-502.

Indigent: A person with little money or property.

Interested Party: a person who has suffered some injury-in-fact, a person who is the beneficiary of some legislative enactment granting standing, or a person who must have sufficient personal interest in the matter so that it is appropriate to allow that person to participate in the matter.

Interested Person: According to [Minn. Stat. § 524.5-102, subd. 7](#), an “interested person” includes:

- The adult subject to guardianship or conservatorship, or respondent;
- The nominated guardian or conservator, or the appointed guardian or conservator;
- Legal representative;
- The spouse, parent, adult children (including adult step-children of a living spouse), and siblings; or if none of these are living or can be located, then the next of kin of the person subject to guardianship, person subject to conservatorship, or respondent;
- An adult person who has lived with the person subject to guardianship, person subject to conservatorship, or respondent, for more than 6 months;
- An attorney for the person subject to guardianship or person subject to conservatorship;
- A governmental agency paying, or to which an application has been made for benefits for the respondent, person subject to guardianship, or person subject to conservatorship, including the county social services agency for the person’s county of residence and the county where the court case is located;
- A representative of a state ombudsman’s office or a federal protection and advocacy program that has notified the court that it has a matter regarding the person subject to guardianship, person subject to conservatorship, or respondent;
- A health care agent or proxy appointed pursuant to a health care directive, a living will, or other similar document executed in another state and enforceable under Minnesota laws;
- In the case of a minor who is an Indian as defined under United States Code, title 25, section 1903, (1) the tribal chairman or delegated agent and (2) the regional direction of the minor child’s tribe with service by registered or certified mail under Code of Federal Regulations, title 25, parts 23.11 and 23.12; and
- Any other person designated by the court.

Inventory: A document that describes all assets of the person subject to conservatorship. A conservator is required to file an Inventory with the court within 60 days of appointment.

Less Restrictive Alternative: If there are other ways to assist an individual with their care and management of their finances, such as a family member providing the individual with assistance in making personal or financial decisions or appointing a Power of Attorney, these methods are considered “less restrictive alternatives” or “less restrictive means.” Before the court appoints a guardian or conservator, less restrictive alternatives must be explored and ruled out before petitioning for the appointment of a guardianship or conservatorship.

Oath: A sworn promise to perform and act faithfully and truthfully.

Penalty of Perjury: Perjury is the crime of intentionally lying or misrepresenting the truth. By signing under penalty of perjury, you are stating that the information in your document is true to the best of your knowledge.

Person Subject to Guardianship: A minor or incapacitated adult who has a court-appointed guardian, lacks sufficient understanding or capacity to make or communicate responsible personal decisions, and who has an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety. Before the rule changes in August 2020, this person was called the “ward.”

Person Subject to Conservatorship: A person who has a court appointed conservator because they lack the capacity or ability to make decisions regarding their financial affairs or estate. Before the rule changes in August 2020, this person was called the “protected person.”

Petition: A legal document requesting action or relief from the court.

Petitioner: The person who brings a petition before the court.

Respondent: The person for whom appointment of a guardian or conservator is sought.

Successor Conservator: Appointed by the court when the person subject to conservatorship is still in need of a conservator, but the current conservator dies, resigns, or is removed.

Successor Guardian: A person appointed by the court when the person subject to guardianship is still in need of a guardian, but the limited duration of the current guardianship is set to expire or the current guardian dies, resigns, or is removed.

Supported Decision Making: A person acting, either informally as a family member or friend, or formally, as a proxy, agent, guardian or conservator, on behalf of an incapacitated person in making relevant decisions regarding personal and medical issues and/or financial issues.

Technological Assistance: Technological assistance that may be used to assist the person subject to guardianship or person subject to conservatorship may include, but is not limited to:

- Direct deposit/withdrawal;
- Computer-assisted communication;
- Computer-controlled wheelchairs;
- Seeing eye dogs; and

- Any other form of applied technology that can assist the person to retain his/her independence.