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## **Conservatorship & Guardianship**

There might come a time where you are suffering from an illness or disability and you are no longer able to adequately care for yourself, your money, or your property. Close family members or friends might be worried about your well-being. If you have not planned ahead for this event by creating a Power of Attorney or naming a person to act as Guardian then your friends or family might decide that the best way to help you is to ask the court to appoint a Conservator or Guardian. This section will answer some basic questions about Conservatorship and Guardianship.

### What is Conservatorship?

A Conservatorship is a legal relationship where one person (the Conservator) is appointed by the probate court to manage the money and property of another person (the protected person) if that person is unable to do so due to illness or disability. The purpose of a Conservator is to make sure that your property and finances are protected and used only in your best interest. Unlike a Guardian, a Conservator only has authority over your money and finances, not your personal life.

Your Conservator is required to use your money to provide for your needs. They may not use your money for their benefit, and must keep your money separate from their own. If you have a Conservator who is not also the Guardian, the Conservator must consult with the Guardian regarding your needs and how best to spend your money.

### Do I need a Conservator?

If you are having a hard time managing your money and property due to illness or disability, your family or close friends might worry about your well-being. If you do not have an agent under a Power of Attorney, they might decide to ask the probate court to appoint a Conservator to help you. When you have a Conservator, you lose certain rights to decide what will happen to your money and property. You can avoid losing these rights by planning ahead and creating a Power of Attorney. *For more information on how to make a Power of Attorney, see the section of this chapter titled: "Powers of Attorney."* If someone is trying to become your Conservator and you don't think you need one, you should get an attorney to help you. Call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to talk to an attorney for free.

### Who will be the Conservator?

The court will appoint someone to act as Conservator for you. Generally, the judge will try and find a close relative or friend who knows you well and who might have a good idea of how you would want your money managed. If that is not an option, a caseworker working through a state agency may be appointed.

Certain people *may not* be your Conservator. For example, if you live in a nursing home or residential facility, the owner may not be appointed Conservator unless they are also your relative. The same is true for any administrator or employee of your nursing home or

residential facility.

What authority will the Conservator have over me?

The Conservator will be responsible for managing your money and finances. They have broad powers regarding how to do this. Primarily, the Conservator must make sure that money is available for your care and support and also must file taxes on your behalf. Any additional money must be invested or managed in a way that is in your best interest and in keeping with how you would want your money spent. This means that the Conservator can make investments with your money, buy property with your money, and in some cases, make gifts or donations to charity.

The Conservator MAY NOT use your money for their benefit and may not draft a Will for you.

What can I do to avoid having a court appointed Conservator?

If you wish to avoid having a court-appointed Conservator, you can plan ahead and choose the person you wish to manage your finances. You can name this person as your agent or attorney-in-fact in your Power of Attorney. For more information on how to make a Power of Attorney, see the section of this chapter titled "Powers of Attorney."

**REMEMBER:** If someone is trying to become your Conservator and you don't think you need one, you should get an attorney to help you. Call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to talk to an attorney for free.

What is Guardianship?

A Guardianship is a legal relationship where one person (the Guardian) is appointed by the probate court to manage the personal affairs of another person (the ward) who the court has deemed incapacitated. If a Conservator has not been appointed, a Guardian might also manage a person's financial affairs.

A Guardianship is unlike an Advance Directive or a Power of Attorney because in those instances, you chose to give authority to others; a Guardianship can be created over your objection, if the court finds that you are incapacitated and need someone to make decisions for you.

**REMEMBER:** If someone is trying to obtain a Guardianship for you, **you have the right to an attorney**. If you do not think that a Guardianship is appropriate, you need an attorney to help you. Call the Legal Services for Maine Elders Helpline at [1-800-750-5353](tel:1-800-750-5353) to get free legal help.

Do I need a Guardian?

If someone is trying to obtain a Guardianship over you, the probate court will decide whether or not you are considered incapacitated. The court will grant a Guardianship only if you are unable to make decisions for your own well-being and safety.

Once a Guardianship has been granted, you lose certain individual freedoms and rights. The

Guardianship will not be removed unless you can prove to the court that:

1. It is no longer needed; or
2. That the Guardian is not acting in your best interests.

**REMEMBER:** If someone is trying to obtain a Guardianship for you, you have the right to an attorney. If you do not believe that a Guardianship is appropriate, you need an attorney to help you. Call Legal Services for Maine Elders to talk to an attorney for free. Call the Legal Services for Maine Elders Helpline: [1-800-750-5353](tel:1-800-750-5353).

Who will be the Guardian?

If the court determines that you need a Guardian and you have not already chosen someone to hold this role in your Power of Attorney or your Advanced Directive, the court will appoint someone. The court will appoint a Guardian in the following order of preference:

- The person or organization nominated in writing by the person in need of a Guardian;
- The spouse;
- The domestic partner;
- An adult child;
- A parent, including a person nominated by Will or other writing signed by a deceased parent;
- A person who served as Guardian, Permanency Guardian, or Legal Custodian of the incapacitated person when the incapacitated person was a child, if the person was actively serving in that capacity immediately before the incapacitated person's 18th birthday;
- Any relative with whom the person in need of a Guardian has lived with for more than six months before the papers were filed in Court to have a Guardian appointed;
- A person nominated by someone who is caring for the incapacitated person or paying benefits to them.

What authority would a Guardian have over me?

A Guardian has similar powers and authority over you that a parent has over a minor child. A Guardian can make decisions about how you spend your money, where you live, what activities you participate in, and unless addressed by an Advanced Directive, what medical care you receive. If the court appoints a Guardian for you, your individual rights and freedoms become greatly limited.

**REMEMBER:** If someone is trying to obtain Guardianship of you, **you have the right to an attorney**. If you do not believe that a Guardianship is appropriate, you need an attorney to help you. Call Legal Services for Maine Elders to talk to an attorney for free. Call the Legal Services for Maine Elders Helpline: [1-800-750-5353](tel:1-800-750-5353).

Are there different types of Guardianship?

Yes, in Maine there are two types: full or limited Guardianship. The type of Guardianship that the court will choose is based on the request for Guardianship, your mental state and your specific needs.

If the court assigns a *full* Guardianship, the Guardian has decision-making control over all areas of your life. This is appropriate when:

- You are unable to make or communicate responsible decisions for yourself;
- A full Guardianship is necessary to ensure that continuing care is provided for you; and,
- Friends, staff, and family members involved in the decision have researched and ruled out less restrictive options.

If the court assigns a *limited* Guardianship, the Guardian has control over some, but not all areas of an individual's life.

What can I do to avoid having the court choose a Guardian for me?

You can plan for incapacitation by naming the individual you would want to be appointed Guardian for you, should the need arise. You can name this person in your Power of Attorney documents, or in your Advance Directive. To learn more about how to get a Power of Attorney or Advance Directive, see those sections in this chapter.

**REMEMBER:** If someone is trying to obtain Guardianship of you, **you have the right to an attorney.** If you do not believe that a Guardianship is appropriate, you need an attorney to help you. Call Legal Services for Maine Elders to talk to an attorney for free. Call the Legal Services for Maine Elders Helpline: 1-800-750-5353.

## Resources

### **Legal Services for Maine Elders**

If you are a Maine resident who is 60 or older and someone is trying to become your Conservator or Guardian and you don't think you need one, call the Legal Services for Maine Elders Helpline at 1-800-750-5353 to speak to an attorney for free.

**Maine Office of Aging & Disability Services, Department of Health & Human Services**  
The Office of Aging and Disability Services is a great resource for older people in the process of planning for their future.

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