

Welcome to the South Dakota Court's orientation program for guardians and conservators. This orientation is mandatory for all guardians and conservators seeking to be appointed by a South Dakota court.

This training does not discuss the process for appointment of a guardian or conservator, nor the rights that a minor child, protected person, or others may have related to the appointment process.

This training focuses on rights and responsibilities after a person has been appointed as a guardian and/or conservator.

This video is here to help you understand your role so that you can make informed decisions when carrying out your responsibilities. The objectives for this training are the following:

- (1) To learn the rights of minors and protected persons under the law;
- (2) To learn the duties and responsibilities of guardians and conservators;
- (3) To understand the meaning of "least restrictive options" when it comes to housing, medical care, and psychiatric care for a minor or protected person;
- (4) To learn about reporting and accounting requirements; and
- (5) To gain resources to assist you along the way to be an effective and supportive guardian or conservator.

Let's begin by defining a few key terms. A **minor** is any child under eighteen years of age. A **protected person** is any individual for whom a guardian or conservator has been appointed for reasons other than being a minor. **Guardianship** is a legal relationship that gives one or more individuals or entities appointed by the court the responsibility of managing the personal affairs of a protected person or minor who is unable to manage their affairs on their own. A **guardian** is one appointed by the court to be responsible for the personal affairs of a minor or protected person. **Conservatorship** is like guardianship in that it is a legal relationship between a protected person or minor and one or more individuals or entities appointed by the court to make decisions on behalf of the protected person or minor. However, while a guardianship may encompass all personal affairs, a

conservatorship is limited to the management of the property and financial affairs of the protected person or minor. The individual or entity appointed by the court is called a **conservator**. The assets managed by the conservator are sometimes collectively referred to as the conservatorship **estate**.

What rights does a minor or protected person give up when a guardian/conservator is appointed?

A minor or protected person retains all rights not granted to the guardian/conservator through the appointment by the court. For example, the guardian/conservator does NOT have the right to change an individual's state of residence, marital status, parental rights, or last will and testament without the court's specific authorization. A conservator could also be required to obtain court approval before selling real property or other assets, before making gifts of assets, or before taking other actions.

Sometimes the court will appoint a LIMITED conservator or LIMITED guardian. That means the conservator or guardian can only make those decisions as specified in the court's written Order.

Sometimes a court may appoint a TEMPORARY conservator or guardian, meaning that the appointment is only for a specified period of time as established by the law.

The court may appoint more than one person as a guardian or conservator (sometimes called co-conservators and co-guardians). This means that you may be serving in your role with another person of equal decision-making authority. If there are other persons who have been appointed with you as co-guardians or co-conservators, you should talk to them about all decisions that are being made on behalf of the minor or protected person.

To determine what the court has ordered in your case, you should not look only at the Letters of Guardianship or Conservatorship that will be signed by the court, but you should also carefully review the court's written Order appointing you as guardian or conservator.

What are the duties and responsibilities of guardians and conservators?

First and foremost, you have responsibilities to the person for whom you are appointed for as guardian and/or conservator. Your responsibilities to this person are to make necessary arrangements for their care and well-being (as guardian) and to manage their assets (as conservator) and to put their interests first—above even your own interests. All guardians and conservators are **fiduciaries**, which means they owe the minor or protected person duties of good faith, trust, confidence, and candor to a higher degree than you would because of any other relationship you may have with the person. You are required to exercise reasonable care, diligence, and prudence when you take action and make decisions on behalf of a minor or protected person.

Let's say you are a guardian of a protected person. You should talk to the protected person if they are able to communicate with you. You should also take into consideration what you know about that person's preferences, values, lifestyle, and beliefs, and what they would do if they had the ability to decide. If you cannot determine what the protected person's decision would be, or if you are guardian for a minor, you should decide based on what is in their best interest. Determining their best interest is a two-step process: 1) Gather reliable information, which may include consulting additional resources and experts in their fields, such as doctors, lawyers, accountants, school administrators, teachers, etc., and weigh the pros and cons of each option, then 2) choose the option that best addresses the person's needs and places the least burden or restrictions on him or her in their current and future circumstances.

As a conservator, you should make decisions about all assets as if you were protecting your own money. You should invest assets and spend money, as necessary, so that all of the assets can support the present and future needs of the person you are responsible for. If you are the conservator for a minor child, and you have another role that obligates you to provide for the minor child (such as parent), you should use your own resources first before using any of the minor child's assets to provide for their care. Self-dealing (meaning paying or giving yourself money or assets out of the conservatorship) is prohibited unless expressly authorized by the court's order or if permitted under South Dakota law.

You may serve as guardian *or* conservator, or you can serve as both at the same time. Sometimes different people serve as guardian and conservator for one person. In those cases, both the guardian and the conservator need to understand one another's role so they can work together effectively. Here is an example of how guardians and conservators can work together. Imagine you are guardian of your parent and your sibling is the conservator. You may need to provide clothing and food or make housing arrangements for your parent. Tell your sibling what is needed and work together to determine what costs are reasonable and necessary. Your sibling will then pay for those things out of the conservatorship estate and apply for any government programs that may cover those costs.

When you are a guardian, a conservator, or both, you should keep notes and records of all the things that you do as guardian and conservator. Particularly as a conservator, you should keep very detailed records and receipts for money and other assets coming in and going out of the conservatorship estate.

You also have responsibilities to the court. Your responsibilities to the court may include seeking the court's permission to perform certain acts. There are some acts that can be completed

without court permission and some acts that require court approval. For more information on your responsibilities to the court, please review the court order or consult with an attorney. Additionally, there are reporting and accounting requirements that will be discussed more fully later. You also have the responsibility to seek court approval when you no longer are able or wish to serve as guardian and/or conservator, or when you believe the guardianship or conservatorship should be changed or ended.

When a guardian makes a decision on behalf of a protected person, the guardian must consider the least restrictive alternative so the protected person has the opportunity to be as independent as possible. The least restrictive alternative means that when you are making decisions as a protected person's guardian, you should keep in mind that you are to exercise your authority only to the extent required by the protected person's limitations, and if possible, should encourage the protected person to participate in decisions, to act on their own behalf, and to develop or regain the capacity to manage their personal affairs. In addition, a guardian should consider the protected person's desires and values when making decisions, and when possible, should make decisions that are consistent with those values. Of course, the degree of independence a protected person can have will vary greatly depending on that person's specific situation.

What reporting requirements do guardians and conservators have?

As guardian of a protected person, an annual report must be filed with the clerk of court notifying the court of specific information. A court may also require the guardian of a minor child to submit annual reports.

As conservator of either a minor or a protected person, you must file an annual accounting with the clerk of court setting forth specific information, unless the accounting has been expressly waived by the court.

You must give notice to all necessary persons of all reports and accountings that you file with the clerk of court. Determining who must be given notice may require you not only to review all of the paperwork previously filed in the case, but you may also need to review South Dakota laws to make sure you have given notice to all necessary persons and entities.

You must also file proof with the clerk of court, in proper form, that you have given written notice to all required persons and entities. You may also be responsible for submitting a proposed order when court approval of any reports and accountings is required.

When do my responsibilities, duties, and power as a guardian and conservator end?

If you were appointed as a temporary guardian or temporary conservator, your power ends when the time period authorized under state law expires and/or as stated in the court order. Under South Dakota law, the temporary guardianship or conservatorship of a minor child cannot be longer than 6 months, and the temporary guardianship or conservatorship of a protected person cannot be longer than 90 days, unless extended for an additional 90 days by court order.

The guardianship and conservatorship of a minor child ends when the child turns 18 years old. You no longer have any power as guardian or conservator on the date the child turns 18.

The guardianship and conservatorship of a protected person ends when the protected person dies. You no longer have any power as guardian or conservator on the date of the protected person's death.

Upon submission of a petition for termination, the guardianship and conservatorship of a minor child or protected person can be terminated prior to a child turning 18 or prior to a protected person's death pursuant to a court order.

If a guardianship and conservatorship continues, but you are unable or unwilling to continue serving in your role as a guardian or conservator, you can petition the court to end your role and to appoint a successor, if necessary.

Regardless of how the guardianship or conservatorship terminates and your role ends, you may be required to file a final report and/or final accounting with the clerk of court and follow the necessary steps to give notice and obtain any required court approval.

What resources are available if you have questions?

If you have questions about what you should and should not do, start by reviewing the court orders that have been issued in your case.

You can also look at instructions that accompany any forms available on the South Dakota Unified Judicial System website: ujs.sd.gov. Please be aware that court staff cannot give you legal advice.

You can review South Dakota law regarding guardianships and conservatorships (SDCL Chapter 29A-5) which can be found at the South Dakota Legislative Research Council website: sdlegislature.gov

For a listing of resources available throughout South Dakota regarding housing, medical care, psychiatric care, and other needs of a minor or a protected person, visit statebarofsouthdakota.com, and click the guardianship and conservatorship link.

Making decisions regarding personal affairs for a minor or protected person or decisions regarding the protected person's or minor's financial affairs can have consequences for the minor and protected person, for third parties, and for you. Therefore, remember that decision making may also involve consultation with doctors, lawyers, accountants, and other professionals to allow you to

make informed decisions on behalf of the protected person or minor. You should not be afraid to reach out to those professionals whenever you need assistance or guidance.

In summary,

What does it take to be a successful guardian? You should be good at collecting information and finding resources. You need to maintain a relationship with the person for whom you have been appointed by visiting, talking, and interacting with the person on a regular basis. Try to learn as much as you can about the person under guardianship and their needs, interests, values, and preferences. Use that knowledge when making decisions about their personal care. When facing a decision, consider all the alternatives, risks, and benefits associated with each option. Ask questions. Get second opinions if you need them. Seek out information to make an informed decision or advocate for the person for whom you have been appointed.

What does it take to be a successful conservator? You should be good at keeping track of income, paying bills, and filing taxes on time. You need to maintain good records including receipts, bills of sale, checks, and other financial documents; keep property in the conservatorship estate separate from your own and anyone else's; keep an eye out for unusual activity regarding the minor child's or protected person's money and property; and finally, make decisions that will preserve the conservatorship assets to cover the present and future needs of the person you care for.

You do not need special knowledge to be a guardian or conservator, but there are some characteristics that successful guardians and conservators have in common. Such as the ability to keep and organize records, to research options, and to meet deadlines. But perhaps the most crucial skill is the ability to set aside your own interests, beliefs, values, and preferences and act only for the person under guardianship or conservatorship, even if that means making choices that you would not make for yourself.

One final point: It is critical for guardians and conservators to know their limits. The court understands that circumstances change. There may come a time when you are temporarily or permanently unavailable to serve as guardian or conservator. If that time comes, take the necessary steps to have the court discharge you from your role and appoint a successor, if necessary.

Your role as a guardian or conservator is important and comes with both responsibilities and limitations. You are not alone as guardian or conservator. You have many resources to help you. We know we have given you a lot of information to digest. Therefore, feel free to go back and watch this training over again to make sure you completely understand your role, and ultimately, your duties. People under guardianship or conservatorship are vulnerable. They need a reliable and trustworthy person to be their guardian or conservator. Remember, the court has appointed you or the entity you work for as guardian or conservator because you or your entity are the best person for the job. Best wishes to you as you take on this important role.