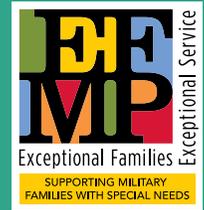


# Guardianship and Conservatorship



Guardianships and conservatorships are intended to protect and provide for ongoing care for individuals determined by a court to be incapacitated, or unable to make or communicate responsible decisions. The court appoints a guardian to make financial and medical decisions, and the incapacitated person loses the legal right to make those decisions. A conservator typically only has the authority to make decisions about financial and property matters. Obtaining guardianship or conservatorship restricts an individual's rights and freedom; therefore, these alternatives should be considered only after all other options are explored.

## Duties and powers of a guardian

A guardian makes decisions about the incapacitated person's life and well-being. A guardian also may have limited authority over money and property. The duties and powers of the guardian vary from state to state. The following responsibilities are found in most guardianship orders:

- Deciding where the individual will live
- Placing the individual in a hospital, nursing home or another residential placement, if appropriate (Note: A guardian cannot commit the individual against his or her will to a mental health institution without following the formal legal procedure for involuntary commitment.)
- Managing all aspects of an individual's care and comfort, including clothing, furniture, transportation, etc.
- Overseeing medical treatment and care
- Arranging for training, education and employment

## Duties and powers of a conservator

If the incapacitated person owns real estate or has a substantial amount of money or property, a probate judge will generally appoint a conservator. Conservators' duties and powers vary from state to state, though typical responsibilities include:

- Providing an inventory of the estate and accounting for all funds and assets

- Spending money for the care of the individual's dependents who are unable to support themselves
- Managing and investing property and money to provide a reasonable return
- Buying and selling property, and borrowing money on the individual's behalf
- Employing people, including lawyers, accountants and investment advisors, to assist in the conservator's duties, and paying for those services from the individual's estate

## Legal process

Every state has a legal process to determine incapacity and appoint a guardian or conservator. The major steps are as follows:

- A petition is filed with the appropriate county or district court.
- The court notifies relatives of the incapacitated person that a petition has been filed.
- The court appoints a court visitor or investigator and, at times, a guardian *ad litem* to represent the incapacitated person.
- A hearing is held where the judge determines if the individual is incapacitated.
- The court appoints a guardian or conservator, or denies the request.

<http://www.militaryonesource.mil/family-and-relationships/special-needs>

Exceptional Family Member Program support is available for military families with special needs.

For more information, please contact your installation EFMP office or visit

<http://www.militaryonesource.mil/family-and-relationships/special-needs>, an official Department of Defense website.