

Terminating or Modifying Guardianship

Frequently Asked Questions

Guardianships can be ended (*terminated*) or changed (*modified*). Guardianships are often set up for a person with a cognitive, psychiatric, or intellectual disability because there were concerns about their well-being or their ability to make decisions that would support their basic needs.

There are many reasons for starting a guardianship. However, this does **not mean it should stay in place forever or shouldn't change. It is important to regularly think about whether the guardianship is still needed or still the right fit in its current form.**

How long does guardianship last?

For people under age 30, guardianships started after August 2020, **automatically end 72 months (6 years) later** unless a new petition is filed asking for another guardianship appointment.

Unless a judge limits the duration at the time of appointment, **all other guardianships stay in place until:**

- The person dies.
- The court **ends or changes** the guardianship after a petition and court hearing that shows it is no longer needed.

Can a guardianship be ended or changed?

Yes. Even if the person's disability has not improved, it is still possible to:

- End the guardianship entirely.
- Give the person back some decision making rights, while leaving some levels of protection in place by modifying the powers of guardianship.

Why consider changing a guardianship?

- **The person is more open to accepting help** in decision making or arranging care and services than they were when the guardian was appointed.
- Support systems or services not available before may now exist or are more suitable now.
- We now know more about available support to make sure a person's needs are met while keeping their decision-making rights.

Before ending or changing a guardianship, think about:

- Does the person have (or can they help identify and develop) support teams, including case managers, who can help them when needed?
- Will the person accept help from their support teams?
- What does the guardian currently do for the person?
 - Would they still help the person in these areas if they were not the guardian?
 - Could someone else help in these areas?
- Are there are other ways to support the person without needing a court appointed guardian?

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When is a good time to review whether guardianship is still necessary?

- When annual court reporting documents are completed.
- When the person's willingness to accept help changes.
- When new support and services become available.
- When the person asks about changing or ending it.

The person's disability or medical condition has not changed — don't they still need a guardian?

Not necessarily. The need for a guardian is not based only on a person's functioning level, disability, or diagnosis. It is based on whether **their needs can be met in less restrictive ways**. That is why the process is called *Restoration of Rights*, or *Termination of Guardianship*, not Restoration to Capacity.

When the guardianship was first set up, the court probably required proof that:

- Less restrictive alternatives were tried.
- How long they were tried.
- Why they didn't work.

If there are now less restrictive ways to meet the person's needs that they accept, the guardianship may no longer be needed.

What are some signs that show we should think about ending or changing a guardianship?

Recent developments in Supported Decision Making show that guardianship is not always necessary. Think about what may have changed since the guardianship was put in place to decide if it is still necessary to meet the person's needs:

- The person has gained or regained skills.
- New technology is available (like GPS so they don't get lost and phone alarms to remind them to take their medicines).
- The person is more open to accept help from family, friends, or community.
- New services or supports are now available.

Also think about other ways the person could get support if the guardianship ended:

- A health care agent could help explain and make health care decisions.
- Support from family, friends, or community.

Ask: What supports should be in place to address the person's needs if the guardianship ended? These supports might already be in place, or readily available, and make the guardianship unnecessary.

Do we need documentation or support from a doctor or other health care provider?

No. You **do not need** medical proof that the person has improved or recovered. You only need to prove:

- The person no longer needs the level of protection that the guardianship provides.
- Their needs can be met with less restrictive options.

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Minnesota's statute does not require any specific documentation, other than a Petition to Terminate (or Modify) Guardianship and other court forms related to the court process. Extra explanations may be needed to teach others what the law requires. Sometimes, judges may still ask for documentation; in this case, supportive statements from professionals can help strengthen the case.

How do we prepare for the court hearing?

Be prepared to tell the court:

- What has changed since the guardianship started.
- What legal tools were tried and what they will use if the guardianship ends.
 - For example, once the guardianship ends, the person regains their legal right to appoint a health care decision maker, or sign Releases of Information to allow their support team to talk to their health care professionals, social workers, providers, and others to help them make decisions.
- What personal and/or professional supporters are available to help make sure the person has access to needed care and services.
- How they will use supported decision making and other tools when they need extra help to understand their situation and make decisions that they can't make alone.

Statements from social workers, doctors, or other health professionals in support of ending or changing a guardianship **is not necessary**, but it can make a stronger case.

How do we prepare? Won't the person's life be chaotic if they suddenly have no guardian?

Ending guardianship does not mean ending support. It means the person will have the support they want and need to help make decisions and/or connect them to needed care and services from their family, friends, community, and professionals instead of the court-appointed guardian. Depending on the person's needs, preferences, and legal ability to enter into contracts, they might:

- Complete a Health Care Directive.
- Sign Releases of Information for their various providers, or have supporters go with them to medical, social services, special education, or other meetings.
- Show support systems in writing by completing a Supported Decision Making Agreement.
- **Note:** If they have a Representative Payee to manage their Social Security benefits, that relationship will continue despite the termination of the guardianship, since that appointment was made by Social Security Administration.

Above all, the person should be actively involved in the planning conversations.

What if the current guardian or other people believe the guardianship is still needed?

It is normal for people to worry or be unsure about ending a guardianship. It might help to explain to the person who is concerned:

- That the person subject to guardianship understands that they still need and want help, like what the guardian may have been giving.
- What supports the person will still have if the guardianship ends.

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Ultimately, the court makes the final decision whether to end the guardianship or not, so the person and their supporters can still continue over others' objections. In the petition and at the court hearing, they or their supporters should be prepared to present the reasons for ending the guardianship and how they will get help going forward.

If the guardian or others' objections will very likely result in losing the request to terminate, think about creative strategies:

- Consider asking for the appointment of a successor guardian instead of ending the guardianship. Finding a supportive person to nominate as a successor guardian may reduce the objections of the existing guardian and concerned others. The successor and the person can then work toward a future termination.
- Start with asking the court to modify the guardianship instead of ending it, to show that the person can manage some responsibilities without the court-appointed authority in all the areas.
- The person, their guardian, and other support people can work toward skill-building within the safety of the guardianship, and petition for termination and less restrictive options later.

For More Information

For an individualized consultation about your situation, contact:

The Guardianship Information Line:

☎ **952-945-4174 or 844-333-1748**

✉ **cesdm@voamn.org**

Visit our website for many more resources:

🌐 **www.voamnwi.org/cesdm**
or scan the QR code

