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# RIGHTS OF PEOPLE SUBJECT TO GUARDIANSHIP

How far do the responsibilities granted to a guardian extend into the daily lives of people subject to guardianship?<sup>1</sup> Conflict or confusion between persons and their guardians<sup>2</sup> and residential and care providers can quickly emerge as each entity may view the issues of right to self-determination, the dignity of risk, and the need for protection very differently.

## Guardian Powers & Duties, and Limitations

Guardianship powers are broad but not unlimited. At the initial court hearing, the judge may grant one, some, or all of the statutorily defined powers to a guardian, including the power to determine where the person subject to guardianship lives (abode power); how care, comfort and maintenance needs are met; managing and protecting personal property; making medical decisions (however, some decisions require further court approval: psychosurgery, electroconvulsive therapy (ECT), and experimental treatment); enter into contracts; exercise supervisory authority, and the duty to apply for and manage governmental benefits ([MN Statute 524.5-313](#)). If a guardian with the authority to use the supervisory authority power makes decisions which limit the civil rights or restricts personal freedom of the person, it must be done only to the extent necessary to provide needed care and service for the person. Judges should grant only those powers necessary to provide for the demonstrated needs of the person, and the person keeps any rights not granted to the guardian.

## Bill of Rights for Persons Under Guardianship

Although the powers that may be granted to a guardian are broad, persons under guardianship and conservatorship are protected by a Bill of Rights. The Bill of Rights states that the person retains all rights not restricted by court order and these rights must be enforced by the court. The following is a summary of rights applicable to people under guardianship; the actual Bill of Rights for Wards and Protected Persons can be found at [MN Statute 524.5-120](#). People under guardianship have the right to:

1. treatment with dignity and respect;
2. due consideration of current and previously stated personal desires, and preferences, including medical treatment preferences, cultural practices, religious beliefs, and other preferences and opinions in decisions the guardian or conservator makes
3. participate in decision making about and receive timely and appropriate health care and medical treatment that does not violate known preferences or conscientious, religious, or moral beliefs of the person; exercise control of all aspects of life not delegated to the guardian by the court;
4. exercise control of all aspects of life unless delegated specifically to the guardian or conservator by court order;
5. guardianship or conservatorship services individually suited to the person's conditions and needs;
6. petition the court to prevent or initiate a change in abode;
7. care, comfort, social and recreational needs, employment and employment supports, training, education, habilitation, and rehabilitation care and services, within available resources;

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<sup>1</sup> VOA MN, in publishing this fact sheet is not offering legal advice. This is intended for informational purposes only and is subject to change. Should specific legal advice be required we recommend you seek the advice of a licensed attorney.

<sup>2</sup> Conflict with persons under conservatorship happen as well, however this document focuses on guardianship only.

8. be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the person's clothing, furniture, vehicles, and other personal property, to object to the disposition of these items, and to petition the court for a review of the guardian or conservator's proposed disposition;
9. personal privacy;
10. communicate, visit, or interact with others, including receiving visitors or making or receiving telephone calls, personal mail, or electronic communications including through social media, or participating in social activities, unless the guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship, and there is no other means to avoid the significant harm. In all cases, the guardian shall provide written notice of the restrictions imposed to the court, to the person subject to guardianship, and to the person subject to restrictions. The person subject to guardianship or the person subject to restrictions may petition the court to remove or modify the restrictions;
11. marry and have children, unless court approval is required;
12. elect or object to sterilization as provided in section [524.5-313](#), paragraph (c), clause (4), item (iv);
13. at any time, petition the court for termination or modification of the guardianship or conservatorship, and any decisions made by the guardian or conservator in relation to powers granted, or for other appropriate relief;
14. be represented by an attorney in any proceeding or for the purpose of petitioning the court;
15. vote, unless restricted by the court;
16. be consulted concerning, and make decisions to the extent possible, about personal image and name, unless restricted by the court; and
17. execute a health care directive, including both health care instructions and the appointment of a health care agent, if the court has not granted a guardian the following powers: *abode; medical decision making; or care, comfort and maintenance needs* powers.

## Person-Centered Practices: Right to Take Risks and the Right to Be Safe

Sometimes tension arises when a person wants to make choices that the guardian wants to restrict, usually due to the guardian's good intentions and desire to protect the person from harm. Sometimes, a guardian doesn't recognize that the person's happiness and life-satisfaction are dependent on the ability to enjoy freedom and choice, and that the guardian's authority does not extend beyond the areas granted by the court.

Additionally, guardians who are also parents or other family members of young adults with intellectual disabilities may struggle with recognizing that the person is an adult now, that the parent's role has changed, and that the role of guardian and scope of decision making may not extend to personal choices such as dating and self-expression.

Person-centered practices are those that demonstrate understanding that supervision and protection practices allow risk taking to the extent that there is no reasonable likelihood that serious harm will happen to the person or others. MN Statute 245D requires that licensed providers of home and community based services provide person-centered planning and service delivery, which means that they "must provide services in response to the person's identified needs, interests, preferences, and desired outcomes as specified in the coordinated service and support plan and ...plan addendum..." and "services must be provided in a manner that supports the person's preferences, daily needs, and activities and accomplishment of the person's personal goals and service outcomes." ([MN Statutes 245D](#))

Sometimes this requirement causes confusion and tension between the person, their service providers, and the guardian. It's important that providers and guardians understand the necessity and importance of ensuring that services and decisions are not overly restrictive and find the balance between what is important to the person and what is important for the person.

The Minnesota Association for Guardianship and Conservatorship ([MAGiC](#)) has published [Standards of Practice for Guardians](#) which provide guidance toward the goal of person-centered guardianship practices. Though these are not mandated by law, they are considered to be best practices for guardians and include the following guidelines:

1. *The individual should be asked what he/she wants in relation to the decision at hand as well as identification of life goals. Consider any needed assistance or accommodations the person may need due to cognitive functioning and ability to express themselves. Even individuals who do not use words to communicate still have opinions and*

preferences. Behaviors such as smiling, grimacing, pulling away from, or leaning into, touch or other stimuli are all forms of non-verbal communication.

2. If the individual is unable, even with assistance, to express goals and preferences, input from others familiar with the person should be sought to help determine what the person would want.

3. The guardian shall:

a. encourage opportunities for the person to exercise rights retained by the person and which the person is capable of exercising;

b. encourage the person to participate to the maximum extent of the person's abilities in all decisions that affect him or her, to act on his or her own behalf where able to do so, and to develop/regain capacity to the extent possible.

c. recognize there is dignity in risk. Individuals experience increased life-satisfaction when they are encouraged to make their own decisions. In exercising decision-making authority granted by the court, the guardian and the person should engage in a risk/benefit analysis in consideration of the individual's desires. Decisions which place the person at low risk of harm should generally be supported. For decisions with higher potential risk outcomes, the guardian/conservator should engage the care team to assist with risk management and mitigation activities when necessary to address the risk of significant harm.

## Rights and Choices of the Person Under Guardianship

This exploration of powers which may be granted to guardians and rights that the person keeps should help all involved in addressing choices the person wants to, and has the right to, make. The likelihood of harm must be weighed in consideration of the happiness and choices of the person, and in recognition that a person who experiences self-determination is more likely to cooperate with needed care provision. Some common areas of conflict or concern include dating or other relationship choices, tattoos, hair or clothing styles, and community/social or religious activities. Consider the following factors when trying to decide how to balance a person's right to be safe with the person's right to make choices and experience maximum levels of self-determination:

- Do the guardian's court-appointed powers cover this decision?
  - If the choice does not fall under the powers granted to the guardian, the guardian doesn't have the right to make the decision; the decision falls to the person.
  - However, as a trusted member of the care team, the guardian can play an important role in supporting the person in decision making, including seeking opportunities to help the person learn how to make choices consistent with their own values and needs.
- Who is objecting to the person's desired choice? The guardian? The provider? Another family member who is influencing the guardian or provider? Is the objection based on what is best for the person, or on the objector's own issues?
  - This may require some exploration to help identify the source of the conflict; sometimes the stated reasons for the objection (health or safety) are very different than the actual, unstated reasons (opposition to the person's lifestyle choices or conflicting values). A trusted person outside of the relationship may be able to provide helpful insight, such as a therapist, spiritual leader, mediator, or case manager.
- What is the likelihood this decision will cause serious harm to the person (or others)?
  - If there is no concern about harm, but rather is a lifestyle or values-based conflict, the person should be allowed to make the decision, but it is appropriate to support the person in making the decision, including seeking opportunities to help the person learn how to make choices consistent with their own values and needs.
- Is the need for safety (likely serious harm) outweighed by enhancement of quality of life / current life satisfaction (happiness) / autonomy for the person?

- Will the choice significantly impact the person's desired outcomes and life goals (including ability to continue living in current setting, obtaining and maintaining a job, etc.)?
- Is there a creative way to meet both choice and safety? This may require some exploration with the person to better understand what the person wants and is hoping to achieve with the choice to determine if the person's wishes can be addressed in less controversial ways.

If you have concerns about the rights of a person under guardianship,  
contact the ***Guardianship Information Line*** for further consultation:

952-945-4174 / 844-333-1748 (toll free) or [cesdm@voamn.org](mailto:cesdm@voamn.org)

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