

Guardianship and Conservatorship Basics

Welcome to our video series on guardianships and conservatorships! My name is Melissa Warnke, and I'm a member of the Alabama WINGS Task Force.

In this series, we hope you will become more informed about adult guardianships and conservatorships in Alabama, what they are, when they are needed, and how the court system is involved. And more importantly, we want you to know about *alternatives* to guardianship and conservatorship and how to avoid a court-ordered guardianship or conservatorship. Why? Because guardianship has the potential to remove a person's decision-making rights. Guardianships and conservatorships are first and foremost *protective proceedings* meant to protect a person from harm. That could be physical harm or neglect. Or it could be financial harm. A guardianship or conservatorship can be very useful in providing for the health and safety of an incapacitated adult, their decision-making, and their financial security. But those concerns should be weighed against an individual's rights to make their own decisions and the effect of being declared *legally incapacitated*.

Let's start with the most basic question: What is a guardianship or conservatorship? Both are court proceedings where an adult is found to be *incapacitated*, and as a result, they are unable to make decisions about their person or property. A court can appoint someone else to make those decisions. The difference is this: A guardian is *of the person*, a conservator is *of their money and property*. A court-appointed guardian has the authority to make the personal, nonfinancial decisions of the incapacitated person. A court-appointed conservator has the authority to make decisions relating to the person's money and property. In some cases, both a guardian and conservator are needed. In other cases, only one or the other is needed.

So, when is a guardianship or conservatorship needed? To answer that question, let's talk about incapacity and what that means. For an adult to be appointed a guardian or conservator in Alabama, a court must find the person to be "incapacitated." Incapacity has two parts – a cause and effect. The causes can be a mental illness or deficiency, physical illness or disability, or even chronic use of drugs or alcohol. One of those causes must then lead to the person's inability to communicate decisions outright, *or* the person's inability to make responsible decisions about their person or property. Not being able to communicate a decision is one thing, but what about not being able to make *responsible* decisions? Maybe the better way to think about it is this: What *irresponsible* decisions is a person making? And, what *harm* is occurring to the person due to those decisions? Is the person's health, safety, or financial security at risk? In those cases, a guardianship or conservatorship may be needed to protect the person.

Guardianships and conservatorships involve three parties. The first is the person found to be incapacitated. Historically, you might have heard this person called the "ward." The second is the person appointed as guardian or conservator who is making decisions for the incapacitated person. Guardians and conservators have what are called "fiduciary duties" to the incapacitated adult. They have a special obligation of trust and loyalty, and the duty to act *for the benefit of* the incapacitated person. The third party is the court. In most cases in Alabama, this is the county Probate Court. The probate judge oversees the guardianship and conservatorship and monitors the guardian or conservator in the performance of their fiduciary duties. If you are

serving as a guardian or conservator, keep in mind you have duties to both the incapacitated adult and the court that appointed you.

Before we move on in the series, let's talk about being declared legally incapacitated. The effect is life-changing for the incapacitated adult. Most of their decision-making rights are transferred to another person. The guardian, not the incapacitated person, makes decisions about where the person lives, what types of medical or mental health treatment the person receives, and even who the incapacitated person can visit or socialize with. The conservator, not the incapacitated person, makes decisions about personal finances, paying debts, and selling property. Some rights are not transferred to the guardian, but are simply lost. For example, in Alabama, a person who has been declared mentally incompetent is not qualified to vote.

In the next video, we'll dive deeper into the idea of capacity, and what it takes for a person to make decisions for themselves. In videos three and four, you will learn about guardianship avoidance strategies AND powers of attorney. In video five, we will discuss guardianships and their alternatives for adults with intellectual disabilities. Video six explores adult abuse and financial exploitation and how guardianship or conservatorship can be effective in protecting vulnerable adults. Video seven outlines the process for obtaining a guardianship or conservatorship. Videos eight and nine cover the specific duties of guardians and conservators. And Finally, in video ten, we will discuss the modification or end of a guardianship or conservatorship. We hope you will stay with us!