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### NF04-590 What is Guardianship?

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# NebFact



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## What is Guardianship?

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*This NebFact, the first in a series, discusses legal guardianship.*

### **Webster's Definition Of A Guardian**

Webster's dictionary defines a guardian as a person who guards or keeps safe and secure a minor child or an adult whom the law regards as incompetent to manage his or her own affairs. Legally, a guardian is "one who has, or is entitled to, the care and management of the person or property, or both."

Guardianship, then, is a legal relationship between a competent adult (guardian) and an incompetent adult or minor child (ward). Guardianship transfers rights and powers from the ward to the guardian, so that the guardian has the power to make decisions on the ward's behalf. At the same time, guardianship creates a duty on the part of the guardian to act in the ward's best interests.

Guardianship is important because it allows a responsible person to substitute judgment for someone who cannot make or communicate decisions. Even so, guardianship should be used sparingly, precisely because guardians have so much power.

### **What Powers Does A Guardian Have?**

There are full and limited guardians. The guardian has only the powers specified in the letters of guardianship based on the court's specific findings of incapacity. In areas designated by the court, the guardian of an incapacitated person has the same powers, rights and duties toward the ward as a parent has to a child.

The Nebraska Statute regarding guardianship is Neb. Rev. Stat. 30-2620, 1998 cum. Supp. Here is a summary of the powers that may be conferred onto a guardian by the court:

- the ward's place of living within or without this state.
- arranging for medical care for the ward.
- protecting the personal effects of the ward (clothing, furniture, vehicle, etc.).
- giving necessary consent, approval or releases on behalf of the ward.
- arranging for training, education or other services appropriate for the ward.
- applying for private or governmental benefits to which the ward may be entitled.
- doing what is necessary to ensure that any person who may be required to help support the ward does so.
- entering into contractual arrangements on behalf of the ward.
- receiving money and any other items of value on behalf of the ward and applying these funds to the ward's room and board, medical care, personal effects, training, education and other services.

A guardian can be any competent person. Nebraska law states: "When appointing a guardian, the court shall take into consideration the expressed wishes of the allegedly incapacitated person."

There are many options for choosing a guardian, but there are some restrictions. A guardian cannot be an agency that provides residential care, or the owner, administrator or employee (or his or her spouse) of a residential facility that provides care and treatment for the ward.

### **Why Should I Be Interested In Guardianship?**

Older people and people with disabilities are a significant portion of the state's population. Approximately 2,000 guardians are appointed each year in Nebraska. A guardian can be an effective safeguard to protect more vulnerable citizens from exploitation and abuse.

### **Establishing A Guardianship**

Guardianship proceedings begin with the filing of a petition in the county court in which the person alleged to be incapacitated lives. A petition may be filed by the person who allegedly is incapacitated or by anyone interested in the person's welfare. For further information regarding petitioning for guardianship, contact an attorney or the Nebraska State Bar Association.

### **Alternatives To Guardianship**

When a guardian is appointed, the ward loses independence and autonomy, as well as the power to exercise many legal rights. Families, friends and advocates considering guardianship should first review other options. Those options include providing guidance or acting as an advocate. Only when a person is truly unable to make or communicate decisions should guardianship be considered.

Some options to a guardianship include: conservator, representative payeeship, power of attorney, trusts and durable medical power of attorney.

### **Reference**

Developmental Disability Law: A manual for Nebraska Advocates, 1996. Author: Nebraska Advocates Services  
N.R.R.S. 30-2601 through 30-2661>

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