

Video 2 Guardian Orientation

Welcome to the New Mexico Court's orientation program for guardians. Thank you for agreeing to serve as the guardian of a protected person. The court appreciates the commitment you have made.

This video will discuss:

- The duties, ethical considerations, and other responsibilities of the guardian;
- The different types of guardianship; and
- The rights of a protected person.

WHAT IS A GUARDIAN?

A guardian is a person appointed by a judge to manage another adult's personal matters. This may be due to disability, mental illness, disease, chronic substance or alcohol abuse, or any other cause.

But what exactly does a guardian do? As a guardian, your powers and duties are described in the judge's Order, which is issued after the judge holds a hearing. It's your responsibility to understand what the Order says and what you can and cannot do. You should ask questions about the Order during the hearing. Afterwards, if you still have questions, you can call or write a letter to the judge's office.

After the judge issues the Order appointing you as guardian, you will need to file an Acceptance of Appointment with the court. The court clerk will then issue you "Letters of Guardianship". This is an official legal document proving that the judge has given you the authority to make decisions on behalf of the protected person. Please keep the original Letters of Guardianship in a safe place. You can present them as proof to others that you have been appointed as guardian.

TWO FORMS OF GUARDIANSHIP

Let's turn briefly to the two types of guardianship. The judge's Order appointing you as guardian will also state whether you are a "limited" or a "full" guardian.

A limited guardian only has specific responsibilities; the protected person retains all powers not specifically given to the limited guardian. For example, the judge may have found the protected person is capable of deciding where they should live, but requires a guardian to help manage their healthcare appointments and make decisions on what types of medications to take. You must carefully review the judge's Order to understand the powers granted to you, and the powers kept by the protected person.

A full guardian is responsible for making all personal and healthcare decisions for the protected person. However, full guardians *must* still consult with the protected person about their personal preferences, and involve them in decisions as much as possible.

DUTIES OF A GUARDIAN

Once you obtain your Letters of Guardianship, you have accepted the powers and responsibilities as guardian. These tasks and decisions depend on the protected person's needs. They may include:

- Determining the best place for them to live based on their needs and wishes;
- Providing for their diet, social and recreational activities, and employment needs;

Video 2

Guardian Orientation

- Providing for training, rehabilitation, and education consistent with their needs, preferences, and goals;
- Taking reasonable care of their clothing, furniture, vehicles, and other personal items; and
- Arranging for appropriate visitation, contact, and correspondence between them and others who are important to them.

You may also be tasked with:

- Understanding how to get state or federal benefits, or private services and resources, that the protected person is entitled to and needs. This could include food stamps, Medicaid, or Medicare;
- Coordinating with the conservator, if the judge has appointed one, to pay for the protected person's care and needs;
- Coordinating and giving consent to allow the protected person to receive medical or other professional care, treatment, counseling, or other services;
- Hiring appropriate professionals to provide needed services to the protected person; and
- Starting conservatorship proceedings if the protected person is unable to manage their own finances.

Guardians need certain skills to be successful. You should be organized and keep good records of all decisions and transactions. You should also be trustworthy and reliable—always meeting court deadlines, making prompt decisions, and following through with any promises you make to the judge and to the protected person. You should have good communication skills and regularly check in with the protected person to ensure that they're involved in all decisions as much as possible.

You should be a good observer, who can assess how the protected person is doing, the suitability of where they live, and whether there are problems that need solving. It is crucial to be aware of the types of situations that might require contacting the judge or getting support from other resources. You should be good at collecting information and finding resources to support the protected person in ensuring their needs are met, and providing for their rehabilitation, training, and education.

There are also important ethical considerations you must keep in mind when making decisions on behalf of a protected person. Above all else, you must treat the protected person with dignity, and respect their ethical and cultural values. This includes making individualized decisions for them based on their particular needs. You must also act in the protected person's best interest and advocate for their goals, needs, and preferences. This means you make decisions for a protected person that best reflect what *they* prefer, or that reflect *their* lifestyle and beliefs.

Guardians make these decisions even if they would not make them for themselves.

You must make decisions that place the fewest restrictions on the protected person's freedom and rights. Keep all information concerning the protected person confidential, except if it's necessary to secure medical or other services, or to obtain state or federal benefits. Comply with all laws and court orders, including your ongoing responsibility to the judge for reporting on the decisions you make, and ask the judge to change or terminate the guardianship when circumstances change.

Video 2 Guardian Orientation

Ultimately, to be a successful guardian, you should be aware of your limits and ability to serve effectively. The court understands that circumstances change—and sometimes, the guardian or conservator becomes unable to serve. In that case, you must contact the judge as soon as possible to arrange for another guardian or conservator, or perhaps another person who can assist.

EXAMPLE SCENARIO

Let's look at an example of a guardian:

Maria is a young, developmentally disabled adult who lives at home. She qualifies for Medicaid and is on the Mi Via disability waiver, which permits her to get Medicaid benefits while living at home. Her mother, Luisa, is her guardian. Maria wants to work, so Luisa signs her up for a vocational training program and makes sure Maria has a bus pass and knows how to get to the program site. Luisa opens up a checking account so Maria can deposit money earned from her new job. Maria loves to sew, and every week Luisa drives her to a quilting store that offers sewing lessons. Luisa meets regularly with Maria's disability waiver case manager to ensure that Maria continues to qualify for the waiver program. Luisa also regularly monitors Maria's checking account and communicates often with her service providers.

CHANGES TO YOUR GUARDIANSHIP: CO-GUARDIANS AND SUCCESSOR GUARDIANS

At some point, you may need to make changes to your guardianship. You may need help carrying out your duties, or you may have another reason to request that the judge appoint a co-guardian. To do so, contact the judge in writing and ask them to appoint a co-guardian. The judge will either set a hearing or contact you to tell you what you need to do next. Remember, you must get the judge's approval to have a co-guardian.

If circumstances change more drastically, the court will understand if you are no longer able to fulfill your guardian responsibilities. If this is the case, you must ask for a successor guardian. Ask this, in writing, to the judge who appointed you as guardian. The judge will either set a hearing or contact you to tell you what to do next. Your appointment as guardian does not end until the judge enters an order appointing a successor guardian. Until then, you must continue to fulfill your duties.

RIGHTS OF THE PROTECTED PERSON

Regardless of the specific powers and responsibilities the judge gives you, you must always include the protected person as much as possible in making decisions. After all, it's *their* life.

Remember, that in New Mexico, unless the judge specifically orders otherwise, the protected person retains all their rights as a citizen. These include the right to vote, to visit with family and friends, and the right to be involved as much as possible in decisions about their life.

For these reasons, you may *not* restrict the ability of the protected person to communicate, visit, or interact with others. This means the protected person may have visitors and participate in social activities as well as communicate with others through phone, mail, e-mail, text, or social media platforms. The only reason for restricting a protected person's contact with others is because you

Video 2 Guardian Orientation

believe that contact with a specific person poses a significant risk of physical, psychological, or financial harm to the protected person. If you have a good reason for imposing a restriction, it must be for less than one week for family or old friends, and less than two months for non-family members or new friends. If you think the restrictions must be longer, you must ask the judge to issue an order preventing or restricting contact.

Remember, you are not alone. If you have questions about your responsibilities, you may ask the judge for direction, especially if a difficult problem arises. More information is available from the New Mexico Guardianship Association's website and its publication, *Alternatives to Guardianship and Conservatorship and Handbook for Guardians and Conservators*.

Your role as guardian is important. The court thanks you for taking on the responsibility of caring for a protected person and doing your best to ensure their well-being, safety, and dignity.