

Understanding Guardianship and Conservatorship in Massachusetts: Key Issues and Legal Guidance

Services

Conservatorship & Guardianship

- Appointment of Guardians and Conservators For Adults
- Appointment of Guardians and Conservators For Minors
- Guardianship and Conservatorship Litigation
- Removal of Guardians and Conservators

Healthcare & Nursing Home Law

- Conservatorship (For Healthcare Facilities)
- Guardianship (For Healthcare Facilities)

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When a loved one is unable to manage their personal or financial affairs due to age, illness, or incapacity, [guardianship or conservatorship](#) may be necessary to ensure their well-being. These legal arrangements provide a way to protect vulnerable individuals, but they can also raise complex and emotional issues.

What Are Guardianship and Conservatorship?

Guardianship

A guardian is appointed by the court to make decisions about an incapacitated person's personal care and well-being. This may include decisions about:

- Educational, personal, and social needs
- Living arrangements
- Medical treatment

Conservatorship

A conservator is appointed to manage an individual's financial affairs and property. This may include responsibilities such as:

- Paying bills and managing expenses.
- Overseeing investments.
- Protecting and distributing assets.

Both roles are intended to protect individuals who cannot make decisions for themselves, known as "protected persons."

What are the Common Issues in Guardianship and Conservatorship Cases?

1. Establishing Guardianship or Conservatorship

The process of appointing a guardian or conservator involves demonstrating that the individual lacks the capacity to manage their own affairs. This often requires medical evidence and court approval. Disputes may arise if family members disagree about the necessity of the arrangement or who should serve in the role.

2. Lack of Capacity

A central issue in these cases is determining whether the individual truly lacks capacity. Courts

will evaluate whether the person can understand and communicate decisions regarding their care or finances.

3. Duties of a Guardian or Conservator

Guardians and conservators are fiduciaries, meaning they must act in the best interests of the protected person. Common responsibilities include:

- Ensuring the individual's needs are met
- Managing finances prudently and transparently
- Reporting to the court as required

What Happens When a Guardian or Conservator Fails to Perform Their Duties?

Unfortunately, there are instances where a guardian or conservator is unwilling or unable to perform their duties or commits malfeasance. Examples include:

- Mismanaging funds or committing financial fraud
- Neglecting the protected person's needs
- Failing to comply with court orders or reporting requirements

If a guardian or conservator dies, becomes incapacitated, or otherwise cannot continue their role, immediate action is needed to ensure continuity of care and financial management.

How to Address Issues with Guardians or Conservators

Massachusetts law allows concerned parties to take action if a guardian or conservator is not fulfilling their obligations. Options include:

1. Filing a Petition to Remove or Replace the Guardian/Conservator

Interested parties can petition the court to remove a guardian or conservator if they are found to be:

- Failing to perform their duties.
- Engaging in misconduct or malfeasance.
- Unable to continue in their role due to incapacity or death.

The court may appoint a successor guardian or conservator to ensure the protected person's needs are met.

2. Seeking Court Oversight

If there are concerns about financial mismanagement or neglect, the court can require additional oversight, such as more frequent reporting or an independent audit of the guardian or conservator's actions.

3. Mediation or Negotiation

Family disputes about guardianship or conservatorship can sometimes be resolved through

[mediation](#), avoiding the need for prolonged court battles.

The Benefits of Securing Legal Representation For Guardianship and Conservatorship

Guardianship and conservatorship cases often involve complex legal and emotional issues, requiring careful navigation of Massachusetts laws and court procedures. Having experienced legal counsel offers several benefits:

1. **Understanding Your Rights:** An attorney can explain your rights as a family member, protected person, or concerned party.
2. **Efficient Navigation of Court Processes:** Legal representation ensures compliance with court procedures and filing requirements, reducing delays and complications.
3. **Protection of the Protected Person's Interests:** An attorney can advocate for the best interests of the incapacitated individual, ensuring they receive the care and support they need.
4. **Resolution of Disputes:** Skilled legal counsel can help mediate family disagreements or present a strong case in court to remove or replace a guardian or conservator.

At Cohen Cleary, P.C., our attorneys are experienced in handling guardianship and conservatorship matters with professionalism and compassion.

Contact Cohen Cleary, P.C. for Trusted Legal Assistance

If you are dealing with guardianship or conservatorship issues, whether it's establishing a new arrangement or addressing problems with an existing one, Cohen Cleary, P.C. can help. Our experienced attorneys will guide you through the process and advocate for the best possible outcome for you and your loved ones.

Call us today at [508-880-6677](tel:508-880-6677) to schedule a [complimentary case consultation](#). Let us help you navigate these important and sensitive matters with confidence and care.