

## **Guardianship Course – Part 1 – Transcript of Audio**

*The audio component of the course begins with Slide 5.*

### **Slide Number**

5.

There are many different situations in which an adult may show a need for help in handling his or her affairs. An elderly man's memory may be failing. A woman may be unable to handle her financial affairs because she is suffering from injuries from a car accident. An adult child with Down Syndrome may lack the developmental skills to live independently. In situations like these, a legal guardian or conservator may be a solution for meeting the person's needs.

In this course, we'll discuss what guardianship and conservatorship involve. We will provide an overview of the legal nature of these roles. We will present information to help you decide whether to seek a guardianship or conservatorship. We will guide you through the court process. And we will discuss the ongoing duties and responsibilities of a guardian or conservator.

We are only discussing guardianship for adults, not for minor children. However, the information may apply to children with disabilities who will be turning 18 and be considered adults.

6.

Anyone can petition the court to appoint a guardian. If you feel that a person's situation indicates the need, you can file a petition. It is helpful if you are able to be the guardian for a family member or friend. However, you do not need to be able to be the guardian yourself to file a petition with the court. You do not need an attorney to file the petition.

7.

We have divided this course into three parts. Part One will help you decide whether to seek a guardianship or conservatorship. We will also discuss other possible ways to handle someone's needs.

Part Two will guide you through the court process. Part Three will look at your responsibilities and duties after the court appoints you as a guardian.

8.

If you have already been appointed as a guardian or conservator, you must register and complete Part Three to meet your education requirement. If you have not yet been appointed, this third segment is still available to you.

9.

The course will contain short quizzes to help you focus on the most important points.

There's also a section listing other resources for additional education and guidance. And we've included a glossary to help with unfamiliar terms.

10.

A **guardian** is a person the court appoints to manage the care of someone who lacks the capacity to handle his or her affairs without assistance.

11.

Alaska law permits the court to appoint a guardian only when necessary to promote and protect the well-being of the person. Because appointing a guardian means taking away some of a person's freedoms and rights, a court must first consider other less-restrictive alternatives for meeting a person's needs.

12.

Not every person needs the same degree of help. In setting up a guardianship, the court will limit the guardian's authority to those areas in which the person needs assistance. There are full guardianships and partial guardianships.

The court will order full guardianship for those who need complete care and attention. The guardian assumes responsibility for the person's care in much the same way a parent has responsibility for the care of a minor child.

The court orders partial guardianship for those who are not capable of handling their affairs in some areas but not in all. The court limits the guardian's authority to certain areas.

13.

A **conservator** takes care of the financial affairs of a person who cannot handle them independently. The conservator's authority involves decisions about money and property.

Often the guardian is also the conservator for the protected person, although sometimes a different person handles this responsibility.

14.

There are many situations which could make it necessary to appoint a guardian. Someone suffering from Alzheimer's who can no longer take care of herself. Someone with a traumatic brain injury. A child with disabilities who is turning eighteen and cannot live independently. Someone whose mental illness prevents him from making rational decisions. In these situations, a guardianship may be the best way to ensure that the person's needs are met.

15.

But there may be other solutions possible. Since appointing a guardian involves taking away some of the person's rights, the Alaska court will take this step only when the person's incapacity makes it necessary.

16.

In Alaska, the court has an order of preferences for choosing a guardian. The guardian can be a family member or friend, a professional guardian, a public guardian, or a nonprofit corporation.

We will discuss how the court chooses a guardian or conservator in more detail in the second part of this course.

17.

It's important to state once more that anyone can **petition** to the court. It isn't necessary that the petitioner be able to serve as guardian or conservator

18.

It's very important to be clear about your goals in seeking a guardianship or conservatorship.

A guardian for an adult has legal powers to handle the protected person's affairs. Depending on the court's order, a guardian can make important decisions about housing, health care, and finances. In many ways, a full guardian has the same responsibilities and powers as a parent of a minor child.

19.

But there are limits to a guardian's powers. And it's important to understand that a protected person is not presumed to be incompetent. That person retains many rights.

20.

You should also consider the practical and emotional demands that being a guardian or conservator will place on you.

21.

In the Case Studies section of this course, we present examples of situations in which an individual seems to need help. With each case, we describe the situation. We offer questions and points to think about. Then we describe the arrangement put in place for each situation.

These examples can help you think about your own situation.

You can access the Case Studies section with the button at the top of each slide.

You can download and print these materials.

22.

The guardian must make sure that the protected person is safe and cared for. The guardian must also make sure that the person has a chance to develop and grow in meeting his or her needs – to the extent possible.

The guardian will make decisions about housing and health care. Unless there is a separate conservator, the guardian will also handle the protected person's finances and property.

The guardian will make sure that the protected person's personal, civil, and human rights are respected.

23.

A guardian doesn't have total authority.

The guardian can't restrict the protected person's right to vote, to apply for a driver's license, or to marry or divorce.

A guardian can't commit a protected person to a mental institution, except through a formal commitment procedure in court. This would be a separate case.

A guardian can't consent to certain medical procedures on behalf of the protected person. This includes abortion and sterilization. In most circumstances, the guardian can't withhold lifesaving procedures.

We will discuss the guardian's authority and duties in more detail later in this course.

24.

The guardian does **not** assume personal liability for the protected person's actions or financial responsibility for the protected person.

25.

The Alaska court system will only appoint a guardian for an adult if it cannot find a less restrictive alternative that meets that person's needs.

Before petitioning the court, you should also explore other possibilities.

A first step is to find out what kinds of problems an individual is having. What is causing concern? Why do you feel the individual is not able to handle her or his own affairs?

26.

It can be difficult when a person makes decisions you don't agree with, especially if the person is your aging parent or your adult child. What if your elderly mother is neglecting her house and property? She refuses to move to a smaller, more convenient place. This is causing you worry. Your mother's memory may be failing or her health declining so that she is in actual physical danger. But perhaps the situation is not so risky; perhaps she is clear-headed and cautious enough in her current place but simply is too frail to maintain the house.

It's necessary to look clearly at the individual and the situation. It's also helpful to understand how Alaska laws might apply.

27.

You should look for an arrangement that restricts a person's freedom only as much as is necessary.

A change in living arrangements, a move to a less demanding place, housekeeping assistance, home health care, automatic bill-paying – there are many possible actions that can solve different problems.

28.

In many situations, a **durable power of attorney** or a **durable power of attorney for health care** provides enough legal authority to meet a person's needs. With a durable power of attorney an individual designates another person to handle decisions if he or she cannot do so or no longer wishes to do so.

A durable power of attorney for health names someone to make medical decisions. These are legal arrangements that can be put in place without petitioning the court. The individual can also revoke or change the power of attorney at a later time.

29.

You want to help in the way that restricts the person's freedom the least. The best arrangement is the one that preserves the most independence, while still assuring the necessary help.

30.

If there are disagreements among those involved about how to care for the incapacitated person, you may want to consider **mediation**.

31.

There are some other points that you should consider if you are thinking about becoming a guardian.

Alaska laws apply only to protected persons who live in-state. To move a protected person out of Alaska will require court approval. It will probably also mean that the laws of the new state will apply.

32.

You should also think about how much travel will be necessary. It may not be practical to be a guardian for someone who lives in a distant part of the state, unless you can travel to see the person several times a year.

33.

Also, consider if you have to be away for long periods – such as for a job on the Slope. As guardian you have to make certain the protected person’s needs are taken care of while you are gone.

34.

Assuming guardianship is a legal process. You will need to petition the court to be appointed. In Part 2 of this course, we will guide you through the basic steps of the court process.