



# TAKACS MCGINNIS

## ELDER CARE LAW

### **Q. What is guardianship?**

A: Adult guardianship is now referred to as “conservatorship” in Tennessee for adults that are 18 years of age or older who a judge decides is a “disabled person.” A conservatorship is a court proceeding. It can be necessary when a person suffers from a mental or physical disability that renders them unable to make financial or healthcare decisions and no other advanced planning is in place. If the disabled person has a durable power of attorney for finances and healthcare, a conservatorship can usually be avoided.

The disabled person’s rights are removed and vested in another person, the conservator.

### **Q: What is a Conservator?**

A: A guardian, or conservator, can be a person, institution, or agency appointed by a court to manage the affairs of another person. That person may be referred to as a ward, a protected person, a respondent, or a disabled person.

In Tennessee the court may appoint a conservator over the person, a conservator over the estate or property or both the person and property.

### **Q: What is a public guardian?**

A: The appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of a willing and responsible family member or friend, or in the absence of resources to hire a private guardian.

### **Q: How does a judge decide if a person needs a guardian?**

A: Just because someone may have some sort of diagnosis, or disability, does not automatically mean they need a guardian. Most important is the person’s ability to make decisions, and to communicate those decisions once made. Can the person fully understand the consequences of the decisions they make? If not, they need help. A Guardian ad Litem (a neutral attorney) will most likely be appointed by the court to help research the situation and report to the court their findings and recommendations.

**Q. Who may file the conservatorship proceeding?**

A. Anyone who has an interest in the disabled person's welfare may file the petition. The petitioner does not have to be named as the conservator.

**Q. Who will the court appoint as Conservator?**

A. The law provides for certain preferring certain people over others. For example if disabled person previously named an agent under a power of attorney that person would be given preference. Absent that, the court may consider a spouse before a child, but would look to an adult child prior to more distant family members. IF there is not anyone to serve a public guardian may be appointed.

**Q. Is there any alternatives to a conservatorship?**

A. If the disabled person is willing and has the requisite level of mental capacity to appoint an agent and sign a power of attorney a conservatorship may be avoided.