

Modifying/Concluding a Guardianship or Conservatorship

In this final video in our series, we will discuss the ways guardianships and conservatorships can be modified and when they end. We will cover four scenarios.

The first scenario is this: the incapacitated person regains capacity. This could be through the recovery from injuries, improvement in medical conditions or mental health, gaining of functional skills, use of effective medications, or advances in technology. The guardian or conservator can go back to the court and file a petition to have the guardianship or conservatorship terminated or limited. The incapacitated person can file a petition as well, in their own right, and regain their decision-making rights. This is sometimes called a *restoration of rights* proceeding. Here's an example from one court case. An 86-year-old woman had a stroke. Her niece was appointed conservator to manage her financial affairs. The aunt moved to an assisted living facility where her condition improved significantly. She wanted to go home and manage her own affairs and petitioned the court for termination. After reviewing clinical records showing improvement, and hearing testimony from the aunt, the court granted the petition.

The second scenario is this: the incapacitated person has developed sufficient decision-making supports and no longer needs the assistance of a guardian. Here's an example from another court case. The court appointed a mother as guardian of her 29-year-old daughter with intellectual disabilities. Three years later, the daughter had developed a network of assistance including a supportive husband as well as help from her mother, close neighbors and other family members, and a social worker who secured necessary supportive services. The judge found the guardianship was no longer needed because there was a system of supported decision making in place.

The third scenario is this: something happens to the guardian or conservator. Someone may allege the guardian or conservator is shirking their responsibilities, misusing the incapacitated person's money, or at worst hurting the person. They could petition the court to have the guardian or conservator removed. Perhaps the guardian or conservator has died, or has become incapacitated due to their own declining health. Someone else can petition to become guardian or conservator. In each of these cases, the judge can appoint a new or what's called a "successor" guardian or conservator.

The fourth scenario is this: the incapacitated person dies. The duties of a guardian or conservator technically cease when the incapacitated person dies. In reality, the guardian or conservator may be called upon to assist with final arrangements, and pay funeral expenses and final bills. You should notify the court of the person's death and hold their possessions, money, and other property safely. If you are serving as guardian only, the judge can terminate the guardianship. If you are serving as conservator, there are additional steps involved. You will eventually turn the person's money and property over the executor of the person's will, a "personal representative" appointed by the judge, or perhaps a trustee named in a trust. As conservator, you will also be required to submit a final accounting to the court before it can terminate your conservatorship. If you are unsure what to do and when, you should consult with your attorney.

Thank you for joining us in this series! Please share these videos and resources on our website with your family, friends, colleagues, and anyone else who might be interested. Take care.