

The Handbook for Guardians and Conservators

a practical guide to New Mexico
law

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Chapter One

PROTECTED PERSON'S RIGHTS

When a person has a guardian and/or conservator named for him or her, (s)he loses many rights that we take for granted. This is why guardianship and/or conservatorship is a drastic measure and should only be used when there is no other way to take care of a person's problems.

Even though you have been named as a guardian or conservator, the **ward** or **protected person** (as (s)he is known in New Mexico) does not lose all rights. Your ward still retains all legal and civil rights as well as basic human rights. The ward or protected person still has the right to:

- — make or change a will or trust;
- — marry;
- — vote;
- — practice religion;
- — receive personal mail;
- — be represented by a lawyer;
- — control personal spending money if granted an allowance;
- — ask the court to end the guardianship and/or conservatorship or change the guardian and/or conservator.

The extent to which the ward can exercise these rights depends on his or her mental capacity. For example, although the ward has the right to make a will, if (s)he does not know what property (s)he owns or who his or her heirs are, the will would not be valid. The ward has the right to marry, but if (s)he does not understand what marriage means, then the marriage would not be valid. What is important to remember is that you cannot deny your ward certain rights just because (s)he is under a guardianship order.

If the ward is in a residential care home, or a nursing home or other long term care facility, the Patient's Bill of Rights and other state laws give him or her more rights. These include the rights to privacy, to have visitors, to have telephone calls and to be free from nontherapeutic chemical and physical restraints. Again, depending on the ward's situation, you have the right to place restrictions on these rights, e.g. to forbid undesirable visitors or limit telephone calls.

If the guardianship is limited, the ward has all the rights not specifically limited in the court order. For example, (s)he could continue to run a small

business, could hire his or her own caretakers, could continue to participate in his or her own healthcare, could choose a place to live, or take a trip if none of these activities was forbidden by the court order.

In general the ward is entitled to respect and understanding, and the right to have his or her voice heard, even if sometimes that voice is expressing thoughts that may not make sense to you. The ward has the right to express concerns, ask questions and make suggestions about decisions you are making for him or her. The ward has basic human rights of privacy and the right to be well cared for. The ward also has the right to be free from physical or sexual abuse, financial exploitation, neglect and self-neglect.

After you understand what rights the ward retains, you must focus on your powers and duties as guardian.