

NATIONAL
HOME OF YOUR OWN
ALLIANCE

HOME OWNERSHIP
WHEN
SOMEONE HAS A GUARDIAN

REVISED MAY 1997

PREPARED ON BEHALF OF:

NATIONAL HOME OF YOUR OWN ALLIANCE
INSTITUTE ON DISABILITY
UNIVERSITY OF NEW HAMPSHIRE

BY

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INTRODUCTION

This booklet is the result of a collaborative effort put forth by the National Guardianship Association and the National Home of Your Own Alliance. In 1993, the University of New Hampshire's Institute on Disability received a five year cooperative agreement from the United States Department of Health Human Services Administration on Developmental Disabilities (ADD) to create a national technical assistance center on home ownership and control for persons with disabilities. The Alliance is currently working with 23 state coalitions of housing finance and disability organizations to develop pilot projects of home ownership and control.


As the Alliance began to assist state coalitions to develop pilot projects on home ownership, it became apparent that many individuals with disabilities that wanted to buy their own homes had guardians that were responsible for their affairs. It also became clear that each state has different statutes governing guardianship. Therefore, a guardian in one state may be required to adhere to completely different standards and statutes to assure an individual owns a home than a guardian in a bordering state.

A guardian is a person or organization named by order of the court to exercise any or all powers and rights over the person and/or estate of another individual. While some states use the term conservator to signify either the responsibility over the estate or over both the person and the estate, others use the term guardian. The terminology used within a state is utilized in the state description.

Acknowledging the different statutes and processes that guardians must acquaint themselves with prompted the National Home of Your Own Alliance to join with the National Guardianship Association to create this booklet. The National Guardianship Association (NGA) is an association started in 1988 to strengthen guardianship and related services through networking, education, and tracking legislation. It is composed of attorneys, guardians, bankers, physicians, advocates, and others. The mission of the NGA is to promote the highest levels of values, standards, and ethics and to ensure nationally recognized standards of excellence.

The original purpose of the booklet was to provide a reference for individuals and organizations wanting to assist persons with disabilities who have guardians to own their homes. Therefore, we set forth to learn what ever we could regarding the different statutes and processes guardians needed to follow in the thirteen states that comprised the Alliance in 1996. Susan McMahon from the National Guardianship Association and Cathy Ficker-Terrill, a consultant with the National Home of Your Own Alliance, joined together to gather information about guardianship statutes and processes within the thirteen states. Material contained in this booklet is based on information reported on surveys returned by individuals in the states of Arizona, Connecticut, Georgia, Idaho, Illinois, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, New York, Oregon, and Texas. With the information gathered, a survey was developed and sent to members of the National Guardianship Association within the thirteen states. Some of the information received from states was contradictory. In other words, two individuals within a state responded suggesting a different process be used to purchase a home. We make note of these situations when they occur.





The information contained in the booklet is not a result of a search of court cases within any state. State statutes are modified frequently. Expectations of the proper management of an estate under guardianship may vary from county to county and even between judges within one county. Therefore, it is advisable to speak to an attorney within the county in which the individual resides regarding the process required to purchase a home for a particular person.

It is important to recognize that state statutes provide specific expectations of a guardian or conservator with regard to the management of the estate of the person. However, not all activities are covered by the statute. Some issues, such as the purchase of real estate, may be determined on the basis of case law. One may also find that different counties, and even different judges within the same county, will respond differently to a request to purchase real estate.

Any guardian or conservator who is presenting a request to the court to purchase real estate should be prepared to fully discuss the benefits to the individual in making such an investment. An explanation of the supports that will be provided to the individual within his/her home will also be relevant and important to the court.

Through the collecting of information from individuals in thirteen states, we have learned that there is little consistency in the law on home ownership through guardianship from state to state, county to county, and even judge to judge. Despite the time and energy necessary to work through these apparent barriers, individuals with guardians in each one of the thirteen states surveyed have successfully purchased their own homes.

Although this brief booklet is by no means a complete representation of the process needed to assist someone who has a guardian to own their home, we hope it will provide the reader with some direction. We strongly believe that attorneys and judges could benefit from further information and training on the successes people with disabilities are experiencing in owning their homes. We recommend that any individual or organization who is committed to assisting someone who has a guardian to own their home establish a relationship (contact) with a local judge(s) who may be asked to make these decisions and provide information, including the benefits to individuals with disabilities of owning and controlling their own homes.



THIRTEEN STATES



DECISION MAKER:

The conservator can make the decision to purchase real estate for the benefit of the individual.

PROCESS REQUIRED:

While not required to seek court approval in advance, it would be prudent for the conservator to do so. Without prior approval the judge could disapprove the transaction at the next annual accounting hearing.

DECISION MAKING PROCESS:

If the conservator seeks prior court approval, a petition is filed in probate court and set for hearing. Notice of the hearing is provided to all interested parties. The conservator should be prepared to discuss the specific benefits to the individual in making a purchase. In addition, the conservator should have a specific home chosen to discuss with the judge.

LENGTH OF TIME:

Typically, this process takes 2-3 months, depending on the court calendar.

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a conservator and no one is available to act in this capacity, the Public Fiduciary for the county should be contacted. The system within Arizona for guardian of last resort is the Public Fiduciaries in each county.

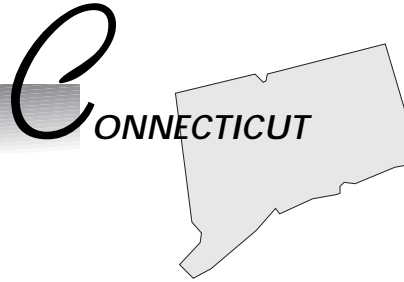
RESOURCE PERSON(S):

Not Answered

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

The conservator has the authority to purchase property for the benefit of the individual with court approval.

PROCESS REQUIRED:

A request is made to the court for authority to make a purchase.

DECISION MAKING PROCESS:

A petition is filed in probate court and hearing date set. Notice of the hearing is provided to all interested parties. The conservator should be prepared to discuss the specific benefits to the individual in making a purchase. In addition, the conservator should have a specific home chosen to discuss with the judge.

LENGTH OF TIME:

Not Answered

GUARDIAN OF LAST RESORT:

Not Answered

RESOURCE PERSON(S):

Not Answered

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

The guardian can make the decision to purchase real estate for the individual.

PROCESS REQUIRED:

The guardian, after making the decision, would petition the court for approval of that decision and for approval to use the individual's funds. A petition is filed in probate court and hearing date set. Notice of the hearing is provided to all interested parties. The guardian should be prepared to discuss the specific benefits to the individual in making a purchase. In addition, the guardian should have a specific home chosen to discuss with the judge. The court would normally only grant approval if this transaction was clearly in the best interests of the individual.

DECISION MAKING PROCESS:

Not Answered

LENGTH OF TIME:

Not Answered

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a guardian and no one is available to act in this capacity, the county guardian should be contacted. The system within Georgia for guardian of last resort is that the Probate Court can appoint the Director of County Department of Family and Children Services as guardian of the person and/or the county guardian (typically a local attorney) as guardian of the Property.

RESOURCE PERSON(S):

Natalie Thomas, Legal Services Developer
Georgia Division of Aging Services
Two Peachtree Street, Suite. 18.403
Atlanta, GA 30303-3176
Ph. (404) 657-5328

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

The conservator can make the decision to purchase real estate for the person.

PROCESS REQUIRED:

There is no unique process required to purchase. The typical requirements of home purchase such as credit history and asset verification would be required.

DECISION MAKING PROCESS:

Not Answered

LENGTH OF TIME:

Typically, this process would take 30 days.

GUARDIAN OF LAST RESORT:

Not Answered

RESOURCE PERSON(S):

Cathy Heart
Idaho Commission on Aging
P.O. Box 83720
Boise, ID 83720-0007
Ph. (208) 334-3833

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

The guardian cannot make the decision to purchase real estate for the person.

PROCESS REQUIRED:

The guardian will need to petition the court for leave to spend the individual's funds for purchase of a home. A petition is filed in probate court and hearing date set. Notice of the hearing is provided to all interested parties. The guardian should be prepared to discuss the specific benefits to the individual in making a purchase.

DECISION MAKING PROCESS:

In many cases a guardian ad litem will be appointed to review the request and make recommendations to the court. The court will make the determination based on the best interests of the individual and his/her estate. Once the court has approved the concept of the purchase of a home utilizing the individual's assets, the guardian is in a position to find a home and enter into a contract. The contract must be written subject to approval by the court. The guardian must then petition the court to approve the contract for purchase of a specific home.

LENGTH OF TIME:

Typically, this process takes two to four months.

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a guardian and no one is available to act in this capacity, the Illinois Office of State Guardian should be contacted. The system within Illinois for guardian of last resort is the state-wide Office of State Guardian which is mandated to act as guardian when no one else is available.

RESOURCE PERSON(S):

Susan B. McMahon, J.D.
Director of Consumer Advocacy
Ray Graham Association for People with Disabilities
340 W. Butterfield, 3C
Elmhurst, IL 60126

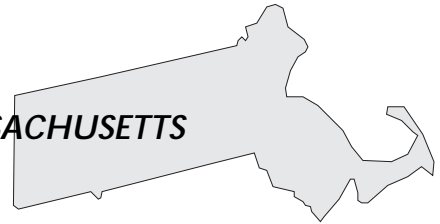
LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





MASSACHUSETTS



DECISION MAKER:

The conservator of the estate cannot make the decision to purchase without obtaining court approval.

PROCESS REQUIRED:

The conservator would have to petition the probate court for approval to use the individual's funds in this manner. A petition is filed in probate court and hearing date set. Notice of the hearing is provided to all interested parties. The guardian should be prepared to discuss the specific benefits to the individual in making a purchase. In addition, the conservator should have a specific home chosen to discuss with the judge.

DECISION MAKING PROCESS:

In Massachusetts, despite there being a conservator, it is the court that is the substitute of judgement where this is required. The role of the conservator is to carry out the court's decision.

LENGTH OF TIME:

Typically, this process would take approximately 1-3 months.

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a guardian and no one is available to act in this capacity, the Executive Office of Elder Affairs or the Department of Mental Health should be contacted. The system within Massachusetts for guardian of last resort is that both the Executive Office of Elder Affairs and the Department of Mental Health have limited state funds for guardianships.

RESOURCE PERSON(S):

Laurie Raphaelson
Raphaelson & Raphaelson
340 Main Street, Suite 545
Worcester, MA 01608
Ph. (508) 799-0366

Marvin Najberg
Jewish Family Service
646 Salisbury Street
Worcester, MA 01609
Ph. (508) 755-3101

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





PREFACE:

In Michigan, guardianship for persons with developmental disabilities is governed by the Mental Health Code. Guardianship and conservatorship for other persons comes under the probate court.

For persons with developmental disabilities, the probate judges can appoint a Plenary Guardian of both the person and estate; Plenary Guardian of either the person or estate; or partial guardianship of the person and/or estate. In the latter appointment, the specific powers are named in the “Letters of Authority.” If a person has a Plenary Guardian of the Person, but no Guardian of the Estate, the person can decide about a home purchase. But, it is possible that the guardian could refuse to permit the person to live in the home. Of course, this type of situation would likely be resolved in court.

DECISION MAKER:

The person, if no Guardian of the Estate exists, makes the decision to purchase. The Guardian of the Estate or Plenary Guardian of the person and estate, and, in some cases, a Trustee makes the decision to purchase real estate for the person.

PROCESS REQUIRED:

Frequently, court orders appointing a Partial or Plenary Guardian of the Estate will mandate that the guardian petition the court to approve expenditures over a certain amount. A hearing would be held pursuant to the petition.

LENGTH OF TIME:

If a petition is necessary, the time from petitioning through hearing may take from a few weeks to several months depending on court dockets, legal need to notify certain parties, and schedules of all involved. If the petition is contested, the process will take longer.

GUARDIAN OF LAST RESORT:

If a person does not have a guardian prior to deciding to purchase a home, it would be totally inappropriate for any party to suddenly seek to remove the person’s rights.

RESOURCE PERSON(S):

Dohn Hoyle
Marsha Rose Katz
WACA
1100 N. Main #205
Ann Arbor, MI 48104

Patti Dudek and Kathy Harris
Living Opportunities
Michigan P & A Services
29200 Vassar, #501
Livonia, MI 48152

LEGAL ASSISTANCE:

If a petition and hearing are required, the court may appoint an attorney to represent the person. Otherwise, advocates like the above-mentioned can help individuals secure the assistance of an attorney when necessary or desirable.





DECISION MAKER:

The conservator of the estate can, with court approval, make the decision to purchase property on behalf of the individual.

PROCESS REQUIRED:

The conservator needs to obtain a court order before making any purchase valued at more than \$1,000. A petition is filed requesting court approval. The guardian should be prepared to discuss the specific benefits to the individual in making a purchase. In addition, the conservator should have a specific home chosen to discuss with the judge.

DECISION MAKING PROCESS:

Following the purchase of a home, the conservator needs to address the issues of in home care and other support services.

LENGTH OF TIME:

Not Answered

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a guardian and no one is available to act in this capacity, the County Public Administrator should be contacted. The system within Missouri for guardian of last resort is that each county has a public administrator.

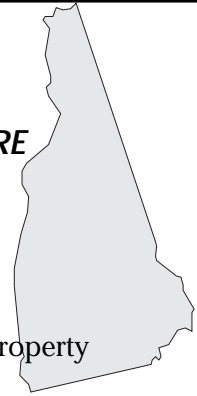
RESOURCE PERSON(S):

Not Answered

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

The guardian of the estate can, with court approval, make the decision to purchase property on behalf of the individual.

PROCESS REQUIRED:

A petition is filed in the probate court which is overseeing the guardianship requesting court approval of the use of the individual's funds to purchase a home. The guardian should be prepared to discuss the specific benefits to the individual in making a purchase. In addition, the guardian should have a specific home chosen to discuss with the judge. Individuals who are developmentally disabled and receive Medicaid funding must have their homes certified annually by the Division of Mental Health, Substance Abuse, and Developmental Services.

DECISION MAKING PROCESS:

Not Answered

LENGTH OF TIME:

Typically, this process takes 30 to 60 days, dependent upon the availability of judges.

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a guardian and no one is available to act in this capacity, there are two public guardianship programs which may be contacted. These public guardianship agencies provide a system within New Hampshire for guardian of last resort.

RESOURCE PERSON(S):

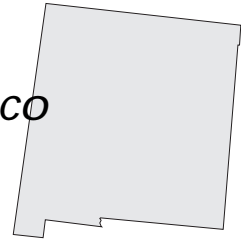
Sabin Guertin
New Hampshire Division of Mental Health
Substance Abuse and Developmental Services
105 Pleasant Street
Concord, NH 03301
Ph. (603) 291-5069

Larrie Bratko, Director
Granite State Guardianship Service
30 Jefferson Road
Whitefield, NH 05906

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

A guardian can not make the decision to purchase property in New Mexico. A conservator can purchase a home for a person who has a disability. If a person has a guardian in New Mexico, they would need a conservator appointed to purchase a home.

PROCESS REQUIRED:

Appointment of a conservator.

DECISION MAKING PROCESS:

A guardian is appointed to provide for the care, custody, or control of the person who is considered incapacitated. A conservator is appointed to manage the property, or financial affairs, or both of the individual and generally has the power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee. Property includes real and personal property. A conservator has the authority to acquire estate assets. A conservator, consistent with his/her fiduciary duties and taking into account the recommendations of the guardian for the care and support of a person with a disability, may purchase a home for the individual's residence. A court, without appointing a conservator, after notice and hearing, may authorize, direct, or ratify a single transaction relating to the person's with a disability estate and financial affairs, if the court finds that the transaction is necessary or desirable to achieve security, service, or care arrangement, meeting the needs of the individual.

LENGTH OF TIME:

Typically, this process takes a few months to 1 year.

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a guardian and no one is available to act in this capacity, there are two corporate guardianship programs which may be contacted. These two corporate guardianship agencies practice a policy of last resort appointment after other resources are exhausted.

RESOURCE PERSON(S):

Corliss Thalley
Office of the Attorney General
P.O. Box Drawer 1508
Santa Fe, New Mexico 87504-1508
Ph. (505) 827-6070

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

A guardian cannot make the decision to purchase a home.

PROCESS REQUIRED:

The authority of a guardian to purchase property is determined, in most cases, by the nature of the court order. A guardian of the person under Article 17-A would not have the authority to purchase property, while a guardian of the property would. However, the guardian of the property would have to seek specific court approval to spend the individual's funds in such a manner.

DECISION MAKING PROCESS:

An Article 81 guardian, who was granted specific authority for the sale and purchase of property, would be authorized to purchase such property, most likely without further court involvement. On the other hand, an Article 81 guardian, who is not specifically authorized to make decisions regarding the purchase and sale of property, would not be permitted to make such a transaction.

LENGTH OF TIME:

Not Answered

GUARDIAN OF LAST RESORT:

Not Answered

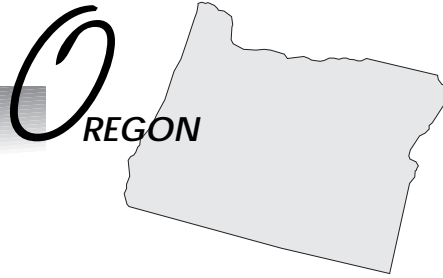
RESOURCE PERSON(S):

Erica Berman
NYSARC
393 Delaware Avenue
Delmar, NY 12054
Ph. (518) 439-8311

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

The conservator of the estate can make the decision to purchase a home for the benefit of the individual. This investment must be reported in the next annual accounting of the estate.

PROCESS REQUIRED:

Not Answered

DECISION MAKING PROCESS:

Not Answered

LENGTH OF TIME:

Not Answered

GUARDIAN OF LAST RESORT:

Not Answered

RESOURCE PERSON(S):

Gary Beagle
Circle of Health, Inc.
208 S.W. First Avenue, Suite 1000
Portland, OR 97204
Ph. (503) 248-9580

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.





DECISION MAKER:

The guardian can make the decision to purchase a home subject to prior court approval.

PROCESS REQUIRED:

The guardian must file an application with the court for purchase of a home. The application should explain why the guardian believes investment in real estate is warranted and in the best interest of the individual. The application must be on file for 10 days before the court can approve. The contract to purchase the home must be submitted to the court for review and approval before the guardian can act upon it.

DECISION MAKING PROCESS:

Not Answered

LENGTH OF TIME:

Typically, this process takes one to six months depending on the county.

GUARDIAN OF LAST RESORT:

If during the process of purchasing a home there becomes a need to appoint a guardian and no one is available to act in this capacity, a local social service agency or the State Office of Protection and Regulation may be contacted. The Probate Code indicates only as a last resort will the court appoint Protection and Regulatory.

RESOURCE PERSON(S):

Terry W. Hammond, Private Attorney
1420 Montana Avenue
El Paso, TX 79902
Ph. (915) 534-7000

Anna Dominquez
El Paso County Probate Court
500 E. San Antonio 12th Floor
El Paso, Texas 79901

LEGAL ASSISTANCE:

Individuals needing support in this process are advised to consult an attorney.

