



GUARDIANSHIP

Adult Guardianships in Nevada: Changes Since 2017

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In recent years, adult guardianships have gained increased attention in Nevada. The state's approach to adult guardianships has undergone significant reforms since 2017, aiming to strike a balance between protecting vulnerable adults and safeguarding their rights. This article provides an overview of adult guardianships in Nevada, focusing on key developments and important considerations for lawyers practicing in this area.

Historical Context

In the years leading up to 2017, numerous reports emerged highlighting disturbing cases of financial exploitation, neglect, and abuse of



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vulnerable adults placed under guardianship in Nevada. These reports often highlighted instances of unscrupulous guardians taking advantage of a Protected Person's assets, isolating them from their families, and making decisions that disregarded the best interests of the individuals they were supposed to protect. Media coverage amplified public awareness and led to increased pressure for reform.

Against this backdrop, in 2015, the Nevada Supreme Court established the Statewide Guardianship Commission in recognition of the urgent need for change. In 2017, the commission presented the Nevada Legislature with a series of statutory reforms to address the systemic issues plaguing the adult guardianship system. These efforts aimed to restore public trust, enhance transparency and accountability, and ensure that vulnerable adults receive the protection and care they deserve.

The remainder of this article describes some significant changes in the law along with practical considerations for attorneys who choose to practice in this area.

Key Provisions and Considerations

Five types of Guardianships

Nevada law permits five types of guardianships:

1. **Temporary Guardianships:** Authorized by NRS 159.0523 and NRS 159.0525, temporary guardianships can be over the person, estate, or both, but are severely limited. They can be granted only when the proposed Protected Person is "unable to respond to a *substantial and immediate risk*" of physical harm, lack of medical attention, or financial loss. (Emphasis added.) The powers granted are limited to addressing only the substantial and immediate risk, which must be documented by the petition. The court must hold a hearing within 10 days of the granting of temporary guardianship to determine the ongoing need and if it should be continued.
2. **Guardianship of the Person** as defined in NRS 159.079 permits intervention regarding medical care, placement in a safe environment, socialization, and general well-being.
3. **Guardianship of the Estate** as defined by NRS 159.083 grants legal authority to the guardian to handle all financial matters, including the sale of real or personal property. In some cases, where the estate of the Protected Person consists solely of monthly payments from social security, a guardianship of the estate can be rendered unnecessary by designating a representative payee with the Social Security Administration. This is a person or business that receives the monthly income

and distributes it for the benefit of the Protected Person. A representative payee is required to report the distribution of the assets to the administration on an annual basis.

4. **Guardianship of the Person and Estate** is the most common type and is simply a combination of the two prior types.
5. **Special Guardianships** as defined by NRS 159.026 are limited guardianships granting limited and defined authority to a guardian to address issues not of long-term duration. The court order granting a Special Guardianship should specifically designate what powers the guardian has.

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Alternatives to Guardianship

Because guardianships are so restrictive of an adult's rights, Nevada encourages the exploration of alternatives to guardianship. Lawyers should assist clients in exploring these alternatives to help individuals maintain autonomy and independence to the greatest extent possible before considering a petition for guardianship. There are essentially two statutory alternatives to guardianship: Powers of Attorney and Supported Decision-Making Agreements.

1. Powers of Attorney (POA): A power of attorney is a legal document that designates an agent or attorney-in-fact to act on behalf of an individual in specific areas of decision-making. By granting a power of attorney, individuals can delegate authority over financial, legal, and healthcare matters to someone they trust. The requirements for healthcare and financial POAs are covered in NRS chapter 162A. The essential question when using a POA as an alternative to guardianship is the principal's capacity to understand the document. A healthcare POA requires two witnesses to attest to the capacity and lack of undue influence on the principal at the signing, while a financial POA only requires a notary's signature. Interestingly, the 2023 Legislature's amendments to Chapter 162A eliminated the provisions that required a medical professional's capacity certification for a POA executed by anyone in a health care setting. While a POA can replace or vitiate the need for a guardianship, the capacity of the individual signing should be firmly established by medical evidence.

2. **Supported Decision-Making Agreements:** Supported decision-making is a person-centered approach that allows individuals to make choices and decisions with the assistance of trusted individuals or a support network. Rather than taking away decision-making

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authority, this approach focuses on empowering individuals and ensuring that they have the necessary support to understand information, consider options, and make informed decisions.

Established in 2019 as NRS Chapter 162C, Supported Decision-Making Agreements can be executed by any adult naming any person or legal entity, including a healthcare provider or corporation to act as an advisor in those aspects of the adult's life delineated in the agreement. NRS 162C.200 holds that the only requirements are that the principal enters into the agreement voluntarily, without coercion or undue influence, and that they understand the nature and effect of the agreement.

While the agreement can give the designated supporter access to healthcare and financial information and directs third parties, such as hospitals and financial institutions, to cooperate with requests for information, it does not give the supporter authority to act on behalf of the adult.

In Washoe County, 60 percent of adult Protected Persons are under the age of 50. This population includes many adults with lifelong disabilities who still retain the capacity to make many of their own decisions with help and guidance from a trusted source. For these individuals, executing a Supported Decision-Making Agreement can relieve them of the restrictive limitations on their life imposed by guardianship.

Methods to Support Guardianships

At the outset or during the course of a guardianship, issues regarding the state and federal benefits for which a Protected Person may qualify can be addressed in certain circumstances. These methods involve removing assets from consideration for benefit qualification purposes.

- 1. Special Needs Trust:** This type of trust shields assets of a protected person's estate from disqualifying him or her from federal benefits. It must be irrevocable and must state that its intent is to exempt its assets from being used to deny benefits pursuant to 42 U.S.C. § 1396p(d)(4)(A) or to any denial of Supplemental Security Income (SSI) benefits in accordance with

Social Security Program Operations Manual System (POMS) SI 01120-20. This is often used to shield money or other assets from an inheritance or personal injury award. The terms of the trust limits the allowable distributions to expenses not covered by public benefits.

- 2. Division of Community Assets and Income:** In the past, divorce was often used as a method to save community assets when one spouse was institutionalized in a care facility, the costs of which threatened to deplete the community estate. Provisions of 42 U.S.C. § 1396r-5 and NRS 123.259 provide for the division of community assets when one spouse is incapacitated and in an institutional care facility. Designed to avoid having the community estate consumed by the costs of care for the incapacitated spouse, this remedy requires a court order. These statutory provisions allow for the income and assets of the community to be transferred to the sole ownership of the capacitated spouse, thereby qualifying the incapacitated spouse for federal and state benefits such as Medicaid.

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The reforms to Nevada's adult guardianship system since 2017 have aimed to strike a balance between protecting vulnerable adults and safeguarding their rights. Lawyers practicing in this area must stay updated on the legislative changes, understand the key provisions and considerations, and advocate for their clients within this evolving landscape. By doing so, they can help ensure that the adult guardianship system in Nevada operates in a manner that upholds justice, transparency, and the best interests of those it serves.



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