

Print version of video for your reference:

A guardian has the responsibility of looking after a person's living arrangements, health care and treatment. A guardian has the duty to consider the wishes of the person, if known. In addition a guardian must defer to a protected person to make decisions on their own and maintain sufficient contact with the protected person to know of their capabilities, limitations, needs and opportunities. A guardian is also a "fiduciary." This means that the guardian owes duties of loyalty and duties of care to the person for whom the guardian was appointed. Guardians must avoid conflicts of interest and must always place the interest of the protected person ahead of their own interests. Guardians must act in good faith and must consult with health care and other professionals as necessary in order to render the best decisions possible for the person for whom they are responsible. If there is more than one guardian, a majority must concur to make decisions.

One of the major responsibilities of the guardian is to file annual reports. The guardian must file annual reports detailing the protected person's situation and the actions that the guardian has taken on behalf of the protected person. Although it is possible to waive the annual accounting requirement that conservators are required to file in some instances, a guardian's report is always required every year unless the court has specified more frequent annual reports. This report is due within 60 days of the first anniversary of the appointment of the guardian and annually thereafter. The guardian's annual report must contain the following information:

1. Current mental, physical and social condition of the protected person;

2. The living arrangements for the protected person during the reporting period;
3. The medical, educational, vocational and other professional services provided to the protected person and the guardian's opinion as to the adequacy of the protected person's care.
4. A summary of the guardian's visits with the protected person and activities taken by the guardian on behalf of the protected person.
5. If the protected person is institutionalized, whether the guardian agrees with the current treatment plan and living arrangements.
6. A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.
7. Any other information requested by the Court or useful in the opinion of the guardian;
8. Compensation requested and reasonable and necessary expenses incurred by the guardian.
9. A guardian's annual report may be combined with a conservator's annual accounting if the guardian and conservator is the same person(s).

A sample report is available on the South Dakota State Bar Association's website at www.statebarofsouthdakota.com.

After the guardian's annual report is completed, the guardian must mail a copy of the report no later than 14 days following its filing with the Court to the following people:

1. The minor or protected person;
2. The minor or protected person's attorney or attorneys, if any;

3. The facility responsible for the minor or protected person's care and custody;
4. The protected person's spouse, children, parents, brothers and sisters, or if none, to the person's nearest known relatives who would be entitled to inherit by intestate succession if the protected person had passed away, and
5. Anyone else ordered by the Court.

As a guardian it is your responsibility to ensure that the person for whom you are responsible is able to maintain as much independence as possible. It is always preferable to consider the least restrictive options available for housing and medical expenses, as well as psychiatric care. In addition, if a conservator is also named, cooperation with the conservator is also essential. There are a number of resources available to assist in performing your duties as guardian. These services include the following:

1. State Bar of South Dakota
222 E. Capitol Ave. #3
Pierre, South Dakota 57501
605-224-7554
www.statebarofsouthdakota.com
2. Dakota Plains Legal Services
528 Kansas City Street, Ste. 1
Rapid City, South Dakota 57701
605-342-7171
www.dpls.org
3. East River Legal Services
335 North Main Ave., Ste. 300
Sioux Falls, South Dakota 57104
800-952-3015
4. American Bar Association
1050 Connecticut Ave., Ste. 400
Washington D.C. 20036
202-662-1000
or
321 N. Clark Street
Chicago, Illinois 60654

312-988-5000
www.americanbar.org

5. National Guardianship Association, Inc.
174 Crestview Drive
Bellefonte, Pennsylvania 16823
877-326-5992
www.guardianship.org
6. South Dakota Unified Judicial System
Pro se guardianship and conservatorship forms and guidance
<http://www.ujs.sd.gov/Forms/guardianship.aspx>

Oftentimes, guardians/conservators are assisted by their lawyers in preparing and filing annual reports/accountings.

These training materials do not eliminate the need for legal assistance or representation from competent attorneys.