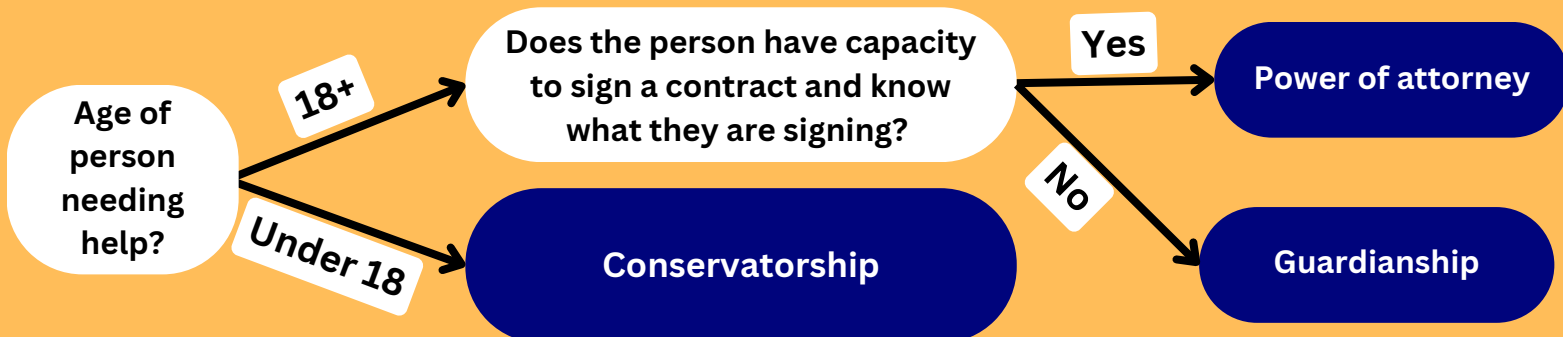


Conservatorship, Guardianship, & Power of Attorney: What is the Difference?

<p><u>Conservatorship</u></p>	<p>Often used to refer to custody of a minor when a court order is in place, conservatorship grants someone (typically a parent or other family member) the right to make decisions regarding the raising of a minor (healthcare, education, religion, etc.). Married parents are automatically considered the conservators of their minor child, but when parents divorce, or were never married, a court order is usually needed to clarify who is/are the minor’s conservator(s) and what rights each conservator has.</p>
<p><u>Guardianship</u></p>	<p>A guardianship is a relationship created and monitored by a court that takes away legal rights from an incapacitated person (called the “ward”) and gives those rights to another person (the “guardian”). <u>There are 2 types of guardianships:</u></p> <ol style="list-style-type: none"> 1. A guardian of the person has control over the ward’s personal matters, such as housing, medical, and educational decisions. A guardian of the person can manage the ward’s public benefits like Social Security. 2. A guardian of the estate has control over the ward’s property and finances. <p>One person can serve as both a guardian of the person and of the estate, or different guardians can be appointed for each.</p>
<p><u>Power of Attorney</u></p>	<p>A legal document that authorizes one person to act on behalf of another. The person who creates the power is the “principal.” The person who acts on behalf of the principal is the “agent.” The powers authorized in a power of attorney can be broad or limited to a specific purpose or transaction and can have varying durations depending on the type of powers authorized and for what purpose.</p>

NOTE: The most important things to consider when deciding which of these options is appropriate are (1) the age of the person that needs help, and (2) the capacity of the person that needs help. This is a general overview of these concepts and further legal analysis will be needed, but these two key factors should take you to the relevant starting point.



	<u>Key Takeaways</u>
<p><u>Conservatorship</u> (Under 18 years old)</p>	<ul style="list-style-type: none"> • Expires when child turns 18 or is emancipated. • Grants conservator power to make decisions regarding the raising of the child. • Various factors used to determine conservator eligibility, such as: conservator’s willingness and ability to care for the child; the current and future needs of the child (physical and emotional); the stability of the living environment provided by each parent; and domestic violence/neglect, if any, in either parent’s home.
<p><u>Guardianship</u> (18 years old and up)</p>	<ul style="list-style-type: none"> • Typically does not expire unless and until ward’s mental capacity improves and ward can make their own decisions. • Grants the guardian the legal authority to make decisions regarding the ward’s personal, medical and financial affairs, ensuring the ward’s best interests are met. • Conviction of certain crimes or “notoriously bad conduct” can preclude an individual from becoming a guardian. • Cannot be applied for until 180 days before the ward’s 18th birthday at the earliest. • Is treated as a last resort, that should only be used when the ward does not have capacity to contract or use alternatives like a power of attorney.
<p><u>Power of Attorney</u> (Above 18 years old)</p>	<ul style="list-style-type: none"> • Can expire at different times depending on the powers authorized in the document (e.g., on a specific date; when the principal becomes incapacitated; upon death of the principal). • Grants an agent the authority to act on behalf of the principal in a specified legal or financial matter. • Principal MUST have capacity to contract (understands what they are signing and the acts they have authorized the agent to perform on their behalf).