

POLITICS

Minnesota re-examines guardianships: ‘They took away her rights’

Court-appointed guardians are calling the shots for a growing number of aging Minnesotans. The controversial role is in the spotlight as the Legislative Auditor’s Office and a new task force look into changes.

By Jessie Van Berkel

The Minnesota Star Tribune

AUGUST 24, 2024 AT 10:23AM



It’s been almost two years since John Roland died, but his wife, Beverly, shown in October 2022, can’t bring herself to bury his ashes. (Renée Jones Schneider/The Minnesota Star Tribune)

For 50 years, Beverly and John Roland were inseparable. Then came the guardian.

During a long hospitalization for COVID-19, a judge decided a guardian should handle John's decisions. She moved him to an assisted living facility hours from his wife, where his health rapidly deteriorated. In John's final months of life, Beverly, who does not drive, struggled to piece together what was happening with her husband's care. She spent late nights researching, "What can I do to get rid of a guardian?"

"I never knew anything like that could happen," said Roland, 74, of Rochester. "It was a nightmare."

A court-appointed guardian can take over an adult's decision making if they are deemed unable to make responsible choices or meet their own basic needs. They provide a critical service for many vulnerable adults, but some families and advocates warn the powerful role can be overused, too restrictive and ripe for abuse. Guardians – often a family member or friend, other times strangers contracted to do the job – can decide where someone lives, what medical care they receive, even who they are allowed to see.

Minnesota is re-examining the system that guides nearly 35,000 lives and is growing with an aging population.

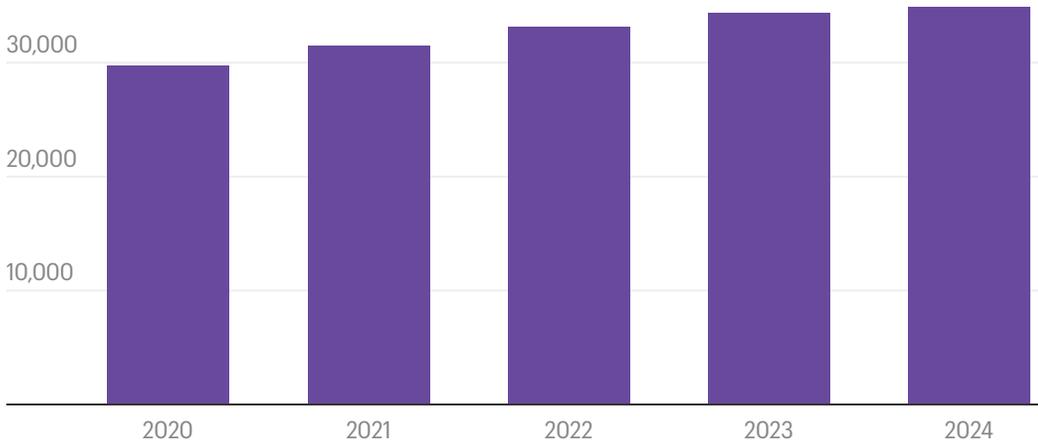
The Office of the Legislature Auditor is reviewing how guardianship training, complaints and oversight are handled. The state is assembling a task force that will recommend changes, including ways to increase qualified guardians, establish licensure or certifications and expand less-restrictive alternatives. And as of this month, guardians are no longer immune from personal or financial liability if something goes wrong with someone under their charge.

More Minnesotans under guardianship

Minnesota is trying to shift toward less-restrictive alternatives to guardianship. But with an aging population, the number of people with a court-appointed guardian continues to climb.

Hover/tap for detail

PEOPLE WITH A COURT-APPOINTED GUARDIAN*



**As of May 1 of each year*

Jim Foster, The Minnesota Star Tribune • Source: State Court Administrator's Office

That change stemmed from the sexual assault of 77-year-old Jean Krause by an assisted living facility employee in 2016. Her family sued, saying the guardian did not tell them about the assault. But the courts determined guardians are immune from liability for negligence. Legislators said Minnesota was the only state with that level of protection for guardians.

“Your dog at doggie daycare had more protections than people under guardianship,” said Rep. Sandra Feist, DFL-New Brighton, who was surprised by the dramatic pushback against her bill to end the immunity protections. It sparked a broader guardianship debate at the Capitol this year, she said, placing Minnesota “at a really good moment when we can take a big step forward.”

Guardians fought the recent change, which they said would prompt people to leave the profession for fear of frivolous lawsuits. They are often underpaid and undertrained for a job that involves navigating dysfunctional families and a lack of health care resources, said National Guardianship Association President Shannon Butler, who said legislators should have waited for task force recommendations before ending the immunity.

“The vast majority of guardians are really trying hard to do a good job. We’re not perfect, we make mistakes, but we don’t want to have that hanging over our heads,” Butler said.

Along with opposition, lawmakers said they also were inundated with tales from people who felt they or their loved one had been treated poorly by a guardian. Sen. Scott Dibble, DFL-Minneapolis, said he is aware of roughly 50 such stories.

With a rising number of older Minnesotans, it’s critical to get the process right and ensure high-quality people are doing the job, said Dibble, who was particularly disturbed by stories of institutions, like long-term care facilities, moving quickly to place people under guardianships.

“It’s a lot of people who are subject to a pretty dramatic circumstance that is all-encompassing,” he said. “It is total and complete.”

A new round of reforms

Guardianship concerns and reform efforts are not new. Fifteen years ago, lawmakers created a bill of rights for those under a guardianship. But some say those rights, such as due consideration of the person’s preferences, are sometimes violated.

Four years ago, legislators added various requirements to ensure guardianships are a last resort, used only if less restrictive alternatives do not work. But the number of people under guardianships has climbed since then.

Court data shows an increase in guardian appointments for people 65 and older in recent years. Last year nearly 500 guardians were appointed for older Minnesotans, up almost 30% from 2019. Guardianship appointments among younger age groups dipped slightly or stayed the same over that time. The largest number of guardianship appointments continues to be for people younger than 21, often individuals with disabilities coming under the guardianship of a family member as they turn 18.

Minnesota has been trying to move toward supportive decision making, where a person selects supporters – such as family members, friends or a case manager – to help with decisions, rather than handing control to a guardian.

“It can be a tough sell when guardianship sounds like such a simple answer,” said Marit Peterson, associate director of the Minnesota Elder Justice Center.

More training and education are needed to help people understand the option, she said. And those working in the court system need to know that prior to imposing a guardianship there must be findings of why it won’t work to use less restrictive options,

such as supportive decision making or having a power of attorney or health care directive, Peterson said.

The new task force on guardianship will yet again look for ways to preserve people's civil rights and expand alternatives, as well as examining guardians' pay and how to increase the number of qualified people willing to do the job. The group will start work in the next couple months with a goal of wrapping up recommendations by summer 2026, said David Dively, executive director of the Minnesota Council on Disability, which is supporting the task force.

The Office of the Legislative Auditor's review, expected to wrap up early next year, will inform that work. Evaluators are looking at whether there are adequate qualifications, screening procedures and training requirements for guardians.

In Minnesota, a guardian needs a criminal history check and background review by the Department of Human Services. No education or license is required.

"We make life and death decisions," said Butler, who has called for a certification process in Minnesota for a decade. "Shouldn't we be required to have more training and oversight than a hairdresser?"

The government should cover the cost of certification if it is required, said Jessica Timmington Lindstrom, president of the Minnesota Association for Guardianship and Conservatorship, noting most professional guardians contract with counties to serve people and often earn "peanuts for the work they do." The state also needs to bolster funding and staffing for its new centralized complaint line, she said.

Minnesota long lacked a clear process for where someone should turn with complaints about guardians. But two years ago the state court system created a pilot project to receive and investigate allegations of abuse, fraud or rights violations by guardians. It also handles complaints against conservators, which is a separate court-appointed role that handles an individual's finances.

Last year, people filed 129 complaints. So far this year, they've gotten 123 complaints, said Jamie Majerus, who manages the program for the Minnesota Judicial Branch. Of the nearly 300 complaints they have received over the past two years, 31 have been substantiated so far. There are 128 open complaints, Majerus said, and one staff member and an intern have been reviewing them.

Federal grant dollars for the complaint line run out this month, Majerus said. But they secured temporary state funds to continue the work and expect soon hear about another grant to sustain and possibly expand the complaint line for several more years.

Legislative Auditor staff are also examining whether the process to handle guardian complaints is “useful, transparent, and comprehensive.”

Concerns about due process

Over the years, people who didn’t know where to turn with guardianship concerns have found their way to attorney Suzanne Scheller, who focuses on elder abuse and neglect.

Their stories often share common themes: someone is struggling to visit or communicate with their loved one who is under a guardianship; a guardian’s care decisions aren’t what the person wants; there isn’t due process when a guardianship is established.

Colleen Howe, of North Branch, is among those who felt her family “didn’t have our day in court” to oppose a guardianship for their 99-year-old mother, who had dementia.

Howe, an elementary school substitute teacher, was her mother’s longtime caregiver. Her brother Dennis Marquardt, a former accountant and computer consultant, had power of attorney and was her health care proxy. When the assisted living facility her mother was in sought an emergency guardianship in 2021, both siblings said they weren’t given an adequate opportunity to rebut it.

“My mom had two people that had only her best interest [in mind] and loved her to pieces, and they took that away,” Howe said. “They took away her rights, in the end.”

Her mother had numerous health issues, including coronary heart disease, advanced dementia and malnutrition, according to a physician’s statement supporting guardianship. A county social worker’s petition seeking guardianship argued her mother would be at risk with Howe, saying she “has been interfering with the respondent’s care, and being demanding of staff.”

Howe said she was not updated on the severity of her mother’s condition and couldn’t believe the way she was depicted, stressing, “I wasn’t abusing my mom, I was just trying to get her well enough to go home.”

In the Rolands’ case, Beverly also disputed how she was characterized in court documents, which said John didn’t have the capacity to make decisions about his own well-being and Beverly had “refused to” make such decisions in the past.

Both Howe and Roland did not feel they were given a chance to respond to such allegations in court. And once the guardianships were granted, they didn’t know how to overturn them.

“There’s just an incredibly unequal power. The judges don’t want to deal with these cases. They’re very difficult cases, they can be very time-consuming. So what’s the tendency? Well, the guardian is taking care of it, we’re going to assume the guardian is doing their job,” said attorney David Ludescher, who has worked on dozens of guardianship cases and tried to help Roland as she struggled to track what was happening with her husband after the guardian he paid for had taken him far away. It’s been most two years since John died, but the pain of that time is sharp in Beverly’s memory, the tears close when she thinks about how they were torn apart. She can’t bring herself to bury his ashes. The urn remains on a desk, John’s veterans cap placed on top.

“He was gone so long,” Roland said. “I’m never going to let him go again.”



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