

LAW IN BRIEF

WHAT IS THE OFFICE OF THE PUBLIC GUARDIAN?

The Nebraska Legislature formed the Office of the Public Guardian in 2014 with the passage of The Public Guardianship Act. The Office of the Public Guardian was created to provide state employed guardians or conservators to individuals when no other individual is available.

The Office of the Public Guardian serves the entire State of Nebraska. It has two main offices, one in Lincoln and one in West Omaha, but also has Associate Public Guardians located in home offices in Norfolk, Hastings, Kearney, North Platte, and Scottsbluff.

Conservatorships and Guardianships are the most restrictive forms of substituted judgment. Substituted judgment is any arrangement when one person is granted the power to make decisions on behalf of another person. Substituted judgments are needed during a time when an individual is unable to, or it is harmful for an individual to, make his or her own decisions regarding his or her health, housing, or finances. While Conservatorship and Guardianship are two types of substitutive judgment, they are not the only options to support an incapacitated adult with decision making. The Office of the Public Guardian is required to explore other substituted judgment options to ensure individuals in need are given as much independence, freedom and inclusion in his or her life decisions as possible, while also protecting the individual from abuse and/or neglect.

DUTIES OF THE OFFICE OF THE PUBLIC GUARDIAN

- Protect the rights of individuals in need** of a guardian or conservator by exploring less restrictive options to support the individual's needs and providing services when there is no other suitable option available.
- Provide model service** of expected practice for all guardians/conservators in the State of Nebraska.
- Provide education, resources, and training** to private guardians and conservators, so that they may serve their wards in the best possible way.
- Encourage and recruit** community members to serve as guardians/conservators.
- Collect and maintain data** regarding guardianships and conservatorships.

Neb. Rev. Stat. § 30 – 4105.

Office of the Public Guardian

Administrative Office of the Courts

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<https://supremecourt.nebraska.gov/progr-ams-services/office-public-guardian>

HOW DOES THE OFFICE OF THE PUBLIC GUARDIAN BECOME APPOINTED AS GUARDIAN OR CONSERVATOR?

1. PETITION & NOMINATION

An attorney who has filed a petition to seek a guardianship or conservatorship for an individual and cannot find a private person to provide services after a good faith and diligent search will nominate the Office of the Public Guardian (“the Office”) in the request. The court will then notify the Office of the request.

2. RESPONSE

Within 14 days of receiving the nomination, the Office will let the court know if it has the caseload capacity to provide guardianship/conservator services to the individual. The Office is limited by statute to the number of people it can accept to provide services. If the caseload is full, the person will be put on a waitlist or denied. If the caseload is not full, the Office will send the court an “acknowledgement of appointment” letter. The letter lets the court know that the Office is now waiting on a report from a Guardian ad Litem or Court Visitor before accepting appointment.

3. COURT VISITOR / GUARDIAN AD LITEM

If the Office accepts an individual to receive services or the individual is put on a waiting list, the court will then assign a Guardian ad Litem to the case or send a Court Visitor to visit the individual at issue.

A **Guardian ad Litem (“GAL”)** is an attorney appointed by the court to ensure decisions are made that are in the best interest of the individual who may need a guardian or conservator.

A **Court Visitor (“CV”)** is a volunteer with a background in law, nursing, social work, mental health, gerontology, or developmental disabilities trained by the Office to interview an individual who may need a guardian or conservator so that the least restrictive option for that individual may be put in place.

The GAL/CV provides the court with a report about the individual’s capabilities. The court then provides the Office with the report, who may then object to the findings of the report if it finds:

- (1) there is another person who is more suitable to serve as the petitioned individual’s guardian or conservator, or
- (2) a guardianship/conservatorship is not the least restrictive remedy for the individual’s needs.

Note, if the Office objects to the findings, a guardian or conservator may still be appointed.

4. HEARING

Within 70-90 days of the petition, the court will hold a hearing. At the hearing, the court will review: (1) the individual’s need for a guardian/conservator, and (2) whether the Office of the Public Guardian is needed to provide guardianship/conservatorship services to the individual.

EMERGENCY NOMINATION OF THE OFFICE OF THE PUBLIC GUARDIAN

An attorney may request an emergency appointment of the Office as guardian/conservator for an individual. An emergency request shortens the time that it takes for the appointment process. Within 24 hours, the Office will let the court know if it has capacity. If it does not, it can deny the request or the court may request it become a temporary guardian. If the Office becomes a temporary guardian, it will provide guardian/conservator services for the individual until his or her hearing that will take place 70-90 days after the emergency petition.

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THE MAKE UP OF THE OFFICE OF THE PUBLIC GUARDIAN

Public Guardian: The director of the office

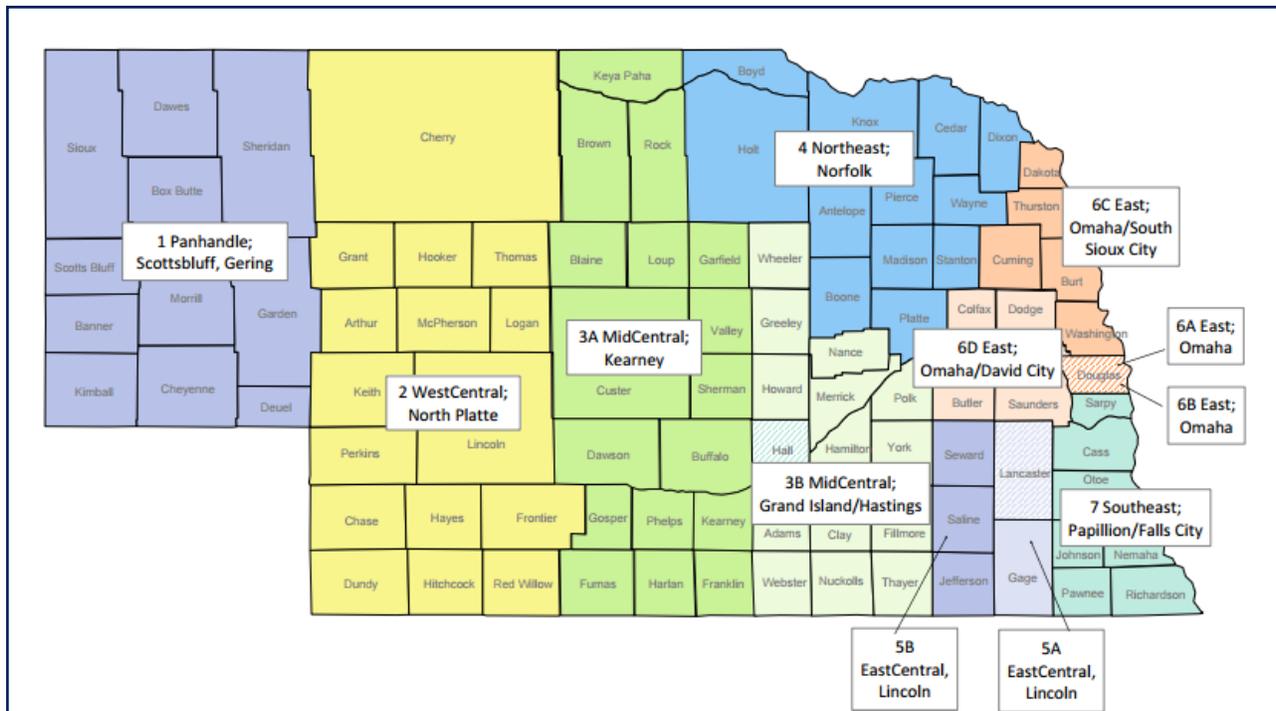
Deputy Public Guardian: Assistant director of the office²

Associate Public Guardians: Provide direct guardianship and conservatorship services to individuals approved by the office.

Support Staff: Community outreach and administrative assistance

WHAT IS AN ASSOCIATE PUBLIC GUARDIAN?

An Associate Public Guardian, “APG” for short, is the person responsible for the direct guardianship or conservatorship of an individual who has been accepted by the Office of the Public Guardian to receive services. The APG manages the finances, property, legal obligations and/or living arrangements for an individual under the care of the Office. There are several APGs serving in all areas of Nebraska. Below is a map that shows the service areas. To find the APG serving in your area, you may look on the Office’s Website: <https://supremecourt.nebraska.gov/programs-services/office-public-guardian/associate-public-guardians>



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As stated previously in this information, the Office of the Public Guardian has a duty to ensure that the least restrictive form of substituted judgment is put in place for an individual in need of substituted decision making. Below is a guide to other decision-making alternatives that work to protect a person in need while also ensuring he/she is provided an option that gives them the most independent living.

Types of Substituted Judgment (Alternatives to Full Guardianship)	
<i>These Alternatives are listed in order from least restrictive to most restrictive form of substituted judgment.</i>	
Health Care Power of Attorney	A person selected by the individual in need to make decisions on his or her behalf regarding health care. The individual selects an “Attorney-in-Fact”, granting him or her authority to make medical decisions for the individual, when he or she becomes unable to make those decisions on his or her own.
Representative Payee	A person selected by the Social Security Administration to make decisions for a person receiving Social Security payments. The Payee is limited to only making decisions about those Social Security benefits.
Power of Attorney	A document that you draft selecting a person to make decisions on your behalf regarding your income, property and assets.
Conservatorship	A Conservator is a court-appointed person granted the power to help an incapacitated person make decisions about his or her property and assets. A Conservator may be the Public Guardian. A Conservatorship may be limited to certain decisions, for a temporary time, or it may be a full Conservatorship that must be contested to be removed.
Guardianship	A Guardian is a person granted the power to make decisions for a minor or incompetent person. A Guardian may make decisions about the person’s living arrangements, medical care, education, legal decisions and obligations, money and property. A Guardian may be appointed by a court or designated through a Power of Attorney or Will. The Public Guardian may be designated as a Guardian for an incompetent person. A Guardianship may be limited to certain decisions, for a temporary time, or it may be a full Guardianship that must be contested to be removed.

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