

**Elder Justice Issues**  
**2020 Legislative Session**

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## **I. Guardianship and Conservatorship**

### **a. Modernization of Minnesota’s Guardianship and Conservatorship Statutes 2020 Minn Laws, [Chapter 86](#) (SF3357 – Article 1)**

- Effective August 1, 2020
  - Allows a court to order parties in a guardianship or conservatorship case to mediate.
  - Makes various federal conforming changes related to [ABLE accounts](#) and federal tax gifting allowances.
  - Changes to definitions:
    - Adds adult step children and tribal chairman/agent to definition of “interested person”.
    - Codifies a definition of interested party consistent with Minnesota case law.
    - Adds a definition of supported decision making. Supported decision making means “assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions which enables the individual to make the decisions and, when consistent with the individual's wishes, in communicating a decision once made.”
    - Incorporates person-first language by changing the terms ward and protected person to “person subject to guardianship or conservatorship”.
  - Changes to notice provisions:
    - Ensures that a bond company involved in the case receives notice of actions that relate to potential claims on the bond.
    - Allows interested persons or the court to waive right of interested persons to receive notices so as to reduce administrative costs.
  - Modernizes and updates several areas of the protected persons’ bill of rights.

- Enhanced privacy protections:
  - Creates bill of particulars so that parties can file private financial and medical information confidentially. Directs parties to file certain documents with private financial and medical information with the bill of particulars.
  - Clarifies that a respondent to any guardianship petition and any person subject to guardianship in any other guardianship proceeding has not placed his or her health, physical, or mental condition in controversy. Any denials, allegations or affirmative assertions by the respondent or person subject to guardianship regarding capacity do not place these matters in controversy. This means a petitioner or other party must put forward evidence related to the respondent's capacity in order for the issue to be under consideration/controversy.
  
- For cases filed on or after August 1, 2020:
  - Requires the petitioner to explain what less alternatives have been attempted, for how long, and why they are not sufficient to meet the needs. Requires the court to make specific findings about what less restrictive alternatives were attempted and why they were not sufficient.
  
- For cases filed before August 1, 2020:
  - Current standards and requirements regarding the petition, proceedings, and any guardianship or conservatorship order remain in effect.
  
- Creates limited guardianships (of up to 6 years) for persons under the age of 30. If a person is under the age of 30 when a guardianship established, the guardianship will end after 6 years (or sooner if ordered by the court). A new petition can be filed at that time if it is still believed the person is incapacitated and no less restrictive alternatives will work.
  
- Clarifies that any guardianship or conservatorship order can be of time-limited duration.
  
- Clarifies that emergency guardianships are temporary, can only last for 60 days, and can only be renewed once.
  
- Clarifies that a guardian has the right to petition for discharge from the guardianship.
  
- Clarifies that bonds are required for estates larger than 1,000,000 and that trust companies cannot only rely on their other legal insurance requirements to cover the assets of the estate.

- Clarifies that guardians have standing to bring various civil claims on behalf of the person under guardianship. Clarifies that conservators are included in the definition of “victim” for purposes of receiving restitution from criminal cases.
- Changes to all guardians’ responsibilities:
  - Heightens the standard under which a guardian can restrict a person under guardianship’s access to visitors. A guardian can only restrict access (including face to face, phone, electronic, or other forms of communication) only when: (1) there is a risk of significant harm and (2) no other alternatives to preventing the risk exist. The guardian must give notice of the restriction to the person under guardianship and the person who is being restricted. The person under guardianship can petition the court to remove or modify the restrictions.
  - Clarifies that guardian can delegate authority to another party for 30 days.
  - Requires guardians to inform certain interested persons (including relatives) if the person under guardianship: has an unexpected change in health or medical condition requiring physician treatment or hospitalization; a significant situation that requires action by ambulance, law enforcement, or fire department; or has a permanent change in his or her primary dwelling.

## **II. Financial Exploitation Protection/Prevention**

### **a. Reporting Protections for Banks and Credit Unions 2020 Minn. Laws, [Chapter 85](#) (SF 2466)**

- Effective August 1, 2020
  - Defines financial services provider as a bank or credit union.
  - Allows a financial services provider to promptly notify the proper authorities (including law enforcement and/or the Minnesota Adult Abuse Reporting Center (MAARC)) when it suspects an eligible adult (a vulnerable adult or person over the age of 65) is being financially exploited.
  - Provides administrative, civil, and criminal immunity to financial services providers for reporting suspected financial exploitation to governmental authorities or notifying third parties.

- Allows (but does not require) a financial services provider to delay a transaction when it reasonably believes (after an internal review) that the requested transaction will result in financial exploitation of the eligible adult. Provides an appeal right for the eligible adult or interested person (as defined in MN Stat. 524.5.102) to challenge the delay/hold on the transaction. Provides immunity for the financial institution for initiating the delay/hold on the transaction.
- Requires the financial service provider to delay a disbursement from an account or place a hold on a transaction in an account when it is informed by governmental authorities that the transaction is a product of financial exploitation.
- Clarifies that a financial services provider acting in good faith in delaying/holding a transaction directed by an attorney in fact shall not be deemed to have violated Minn. Stat. 524.5-.20 – which requires parties to accept powers of attorney that are properly executed under law.