

# Guardianship

## What is guardianship?

A guardianship is an order given by the court to a person (called the guardian) giving that person control over another person (called the ward). The guardianship may give the guardian control over the ward's property or physical person or both.

In order to get a guardianship, the ward must be incapacitated. This means that the ward has a disability (such as a mental or physical illness), is mentally slow, is a chronic user of drugs or alcohol, or has any other condition that makes him or her unable to manage health, safety, or financial matters. You can also get a guardianship if the ward is a minor child who is not emancipated. This fact sheet is specific to guardianship over someone who is 18 years or older.

A court will decide whether the ward can take care of themselves or finances and property. Mismanagement of one's money is normally not enough to be granted a guardianship.

## Who can get a guardianship?

Family members often request a guardianship, but a guardianship can be requested by any interested adult.

## Who can be a guardian?

A guardian can be any person who is:

- A resident of the state;
- 18 years or older;
- Of sound mind; and
- Not a convicted or unpardoned felon.

The Department of Human Services, a corporation, or a bank can also be appointed as a guardian.

**A guardian is not free to do what he or she wants with the ward or with the ward's property.** A guardian is responsible for taking care of the ward and the ward's property. A guardian must file a petition with the court and get written permission before making some decisions, like withholding life-saving medical treatments, terminating parental rights, and prohibiting the ward from obtaining a driver's license.

Once a year, a guardian is required to make reports to the court about the ward. The ward or the ward's estate

may sue a guardian who does not take care of the ward or the ward's property properly.

## How do I get guardianship?

There are 3 steps to getting a guardianship.

1. A petition must be filed with the court
2. An evaluation must be made by a professional
3. A court hearing will be held

**Filing the Petition:** The petition is filed in the circuit court of the county where the ward lives. The ward must be served with the petition, notice of the hearing, and be informed of his or her rights.

**Evaluation:** If no professional evaluation has been made of the ward within 6 months of the hearing, the judge will order an evaluation to be performed. A physician, psychologist, and/or social worker may do the evaluation. The team evaluates the ward's condition and reports to the court.

**Hearing:** At the hearing, the ward has a right to have an attorney to present evidence, cross-examine witnesses, and have the professional who prepared the evaluation testify about the ward's condition.

If the judge decides that the ward is incapacitated, then the judge will decide how incapacitated the ward is. The judge will also decide if something else can be done to help the ward besides a guardianship. If nothing else can be done, the judge will order a guardianship of the ward.

The judge will issue an order to the guardian. This order will explain exactly what the guardian can and cannot do with the ward and the ward's property. The court clerk will then give the "letters of guardianship" to the guardian. These letters are what the guardian gives to other people, so that the guardian can take care of the ward and the ward's business.

## When does a guardianship end?

A guardianship can end for many reasons. Some reasons include:

- The ward dies
- The ward moves out of state

- The judge finds that the ward has become competent
- The judge finds that continuing the guardianship is not in the best interest of the ward

## Do I have to get a guardianship?

Guardianships are expensive and require a lot of work. Guardianships also mean that the ward loses the ability to care for themselves. There are other ways to help a person take care of themselves or their needs without getting a guardianship. This includes:

**Power of Attorney:** A power of attorney is a document that a person (called a principal) can give to someone they trust (called an agent). The power of attorney allows the agent to make decisions about the principal's medical care or treatment or to handle business on behalf of the principal.

Normally, a power of attorney ends if the principal becomes incompetent. However, if the power of attorney is "durable," then it will be good even if the principal becomes incompetent.

Durable powers of attorney are generally made when a person is having medical treatment or losing mental capacity. **A person must be competent when signing a power of attorney for the document to be valid.** The advantages of a power of attorney over a guardianship are:

- The principal has control over who is given the power of attorney
- The principal may end the power of attorney at any time
- You do not have to go to court to get a power of attorney
- No court supervision is required
- It is inexpensive

**Conservatorship:** A conservatorship is created when a person consents to allowing someone else to handle their estate without being declared incapacitated. This is like a voluntary guardianship. The procedure is the same as for a regular guardianship. The difference is that there is no need for an evaluation, so the proceeding is usually less expensive.

**Living Wills:** A person has the right to make a statement, called a living will, which states their wishes about withholding or withdrawing life-sustaining treatment.

Forms are available that you can fill out and give to your doctor.

The living will only becomes effective if the attending doctor determines:

- You are terminally ill
- You are no longer able to make decisions
- You are permanently unconscious

The living will only applies to medical decisions. It is not a real "will" and will not decide what should be done with your property after your death.

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