

Guardianship

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In the eyes of the law, even those with a significant developmental disability are legally permitted to make decisions on his or her own behalf at the age of 18. Therefore, if due to a disability, a person is not capable of making his or her own decisions, it is necessary to secure the judicial appointment of a guardian.

A guardian is someone appointed by the court to make decisions on behalf of another person who cannot make decisions independently. There are two types of guardians:

- 1) A guardian of the person usually has the power to make decisions concerning living arrangements, day programs, medical care, and other personal decisions.
- 2) A guardian of the property usually has the power to make decisions regarding whether and how to sell, trade, or invest property. They do not, however, have power over assets held in trust unless the guardian is also the trustee.

In order for someone else to have this authority, a court must first find that the person cannot make decisions about him/herself or his/her property. If a court determines this to be the case, it will appoint someone to take on this responsibility; in most cases, one or both parents. The court may also appoint a brother or sister to serve as guardian with the parents, or alone, after the parents have died. Once they have secured guardianship for an adult child, parents can appoint a successor guardian in their will, or can temporarily delegate guardianship through a written document called a power of attorney.

The guardian's job is to make decisions in the best interest of the person under guardianship and make sure he/she is safe. The guardian does not bear any risk for the person's acts or debts, and is under no legal obligation to provide direct care to the person. There is no 'downside' to serving as a guardian.

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