



Mental health
advocacy, education
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Guardianship Fact Sheet

Guardianship is a legal intervention for an individual with mental, physical, or developmental disabilities that a judge determines is unable to engage in responsible decision-making and independently manage personal and financial matters. A guardian takes on the legal responsibility to manage the areas that the individual (ward) is unable to manage themselves, as determined by the court. Guardianship must be used to promote the wellbeing of the ward, encourage the maximum self-reliance and independence, and protect them from neglect, exploitation, and abuse.

Adults with mental, physical, developmental disabilities or other cognitive impairments have the right to make their own decisions about healthcare, how to spend their money, where to live, and personal relationships. Only when a judge determines that an individual is unable to engage in responsible decision-making and independently manage personal and financial matters is guardianship warranted.

Each guardianship arrangement is different based upon the needs of the ward and the court proceedings. Guardianship can be tailored so that the guardian can only manage those areas that the ward is unable to manage themselves. Guardianship may be full, limited or temporary; it may address personal decision-making (guardian of the person), financial decision-making (guardian of the estate), or both (plenary guardian).

A guardian may be permitted to...

- Decide where the ward will live
- Provide or arrange for the care, comfort, personal, and support services of the ward
- Arrange for the education, social, and recreational needs of the ward
- Manage the estate, finances, bills, taxes, and bank accounts of the ward
- Communicate with healthcare and other service providers on behalf of the ward
- Do estate planning and manage assets of the ward

A guardian cannot...

- Consent to involuntary medication, electroconvulsive therapy (ECT) or medical procedures
- Consent to sterilization against the wishes of the ward
- Place the ward in a residential facility such as a nursing home without their consent
- Involuntarily admit the ward into a mental or psychiatric facility

Guardians are required to act in the best interest of the ward, manage finances prudently, and act in accordance with the wishes of the ward whenever possible.

Any person over 18 may file a petition with the court to initiate guardianship proceedings. A guardian is typically a close friend or family member of the individual, but the Office of the State Guardian can serve as the guardian when no alternative is available. The court process can be expensive and lengthy. Before family members or others go to court to be appointed guardian,



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they should consider whether some of the above alternatives can meet the needs of the individual without unnecessarily limiting their rights and independence. Several legal and non-legal alternatives to guardianship are available to help people with disabilities manage their affairs.

Alternatives to Guardianship:

- Power of attorney to transact financial affairs
- Power of attorney for health care
- Health care surrogacy
- Mental health advance directives/treatment declaration
- Representative payees
- Special Needs Trust
- Bill-paying assistance programs
- In-home supports, home healthcare, homemaker services
- Advocacy and case management
- Psychosocial skills-building groups

For more questions about guardianship, contact the Guardianship and Advocacy Commission at (866) 274-8023.

Information Sources:

Illinois Bar Association

<https://www.isba.org/sites/default/files/publications/pamphlets/Serving%20as%20Guardian%20for%20Adult%20with%20Disabilites.pdf>

Illinois Guardianship and Advocacy Commission

<https://www.illinois.gov/sites/gac/Pages/default.aspx>

Equip for Equality <http://www.equipforequality.org/learn/rights-information-by-topic-area/resources-self-determinationguardianship/>