

Guardianship

A guardianship is created when a court authorizes someone to protect the personal rights or the finances of an adult with disabilities. This guardian may be a parent, sibling, friend, or professional agency. The guardian has authority to act in specified areas set forth in the court order.

A guardianship can be established for the **person only**, **the estate only**, or **the person and estate** of a person who needs one. Guardianship of the person covers needed personal services, such as living arrangements, transportation, and medical services (including informed consent for medical treatment). Guardianship of the estate covers financial and contractual matters. The court also has the option of appointing a **limited guardian**. A limited guardianship acknowledges that the person with disabilities has some decision-making abilities and specifically limits the power of the limited guardian to assist the incapacitated individual only to those areas where he or she needs help.

A Petition for Guardianship must be prepared and filed with the court of the county where the person resides. The Petition contains general information regarding the person, including age, address, physician, the nature of the incapacity, an estimate of the incapacitated individual's net worth, names of the proposed guardians, and the person's relatives.

The court appoints a temporary guardian ad litem to investigate and make a recommendation as to whether a guardianship is in the best interest of the person with disabilities and whether the proposed guardian is appropriate. A written report is made to the court by the guardian ad litem regarding the investigation.

If the person with disabilities does not want a guardian, the court will appoint an attorney to oppose the guardianship. If the person is too poor to hire an attorney, the county will pay for one.

After a guardianship is established, the guardians will be required to report back to the court annually (or every three years, if the person has few assets). If the person has more than a minimal amount of money, then the court will require the guardian to arrange for some security, in case the money is lost or wrongly reduced by the guardian.

This is general information that may be useful to caregivers and family members of persons with disabilities. It is not legal advice on individual cases which may have particular characteristics that alter the best choices. It was originally drafted by attorneys Karen Thompson and Suzanne Howle; it has been revised by the Law Offices of Larry A. Jones.