

## **What Is a Guardianship?**

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When a person has not signed a durable power of attorney or advance medical directives, the appointment of a guardian may be necessary.

### **What is a guardian of the person?**

Guardian of the person is someone appointed by the court to handle the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, education, therapeutic treatment, and residence.

### **What is a guardian of the property?**

Guardian of the property is someone appointed by the court that is responsible for managing the assets, income and financial affairs of an incapacitated person.

### **When is a guardianship appropriate?**

Guardianship is appropriate when a person has diminished capacity and is no longer able to understand and appreciate the consequences of their actions or inactions. A finding that an individual displays poor judgment, alone, is not considered sufficient evidence that the individual is incapacitated.

### **How does one become a guardian?**

A petition must be filed with the court requesting the appointment of a guardian. After filing the petition, the court will appoint a court evaluator to represent the interests of the alleged incapacitated person. The court evaluator is the eyes and ears of the court. This person interviews all the interested parties and files a report with the court either recommending the appointment of a guardian or concluding that the person does not need a guardian. In addition, the report usually makes a recommendation as to who should be the guardian. The alleged incapacitated person is entitled to a jury trial, upon request, and may present evidence and cross-examine witnesses. If, after considering the evidence, the court determines on the basis of clear and convincing evidence that the individual is incapacitated and in need of a guardian, the court appoints a suitable person as guardian. The court usually appoints a family member as guardian, unless there are no suitable family members available to serve. A guardian appointed by the court must qualify prior to receiving a commission to act. The qualification process includes: (1) signing an oath promising to faithfully perform his or her duties, (2) posting bond and (3) attending a guardianship training course.

### **How long does this appointment last?**

The court order appointing a guardian may limit the appointment to a specified length of time. If no time limitation is specified, then the appointment will last until the death of the incapacitated person or the guardian, until the incapacitated person is able to establish that he or she has regained capacity, or until the guardian resigns or is removed by the court.

**What authority does the guardian have?**

Except as limited by the court, the guardian has control over the personal affairs of the incapacitated person. This includes deciding where the incapacitated person will live and making routine medical decisions for the incapacitated person. Subject to the limitations in the guardianship order, the guardian has the authority to take care of and preserve the estate of the incapacitated person and to manage it in the best interests of the incapacitated person.

**What are the responsibilities of the guardian?**

A guardian must maintain sufficient contact with the incapacitated person to know his or her capabilities and visit the incapacitated person at least 4 times a year. The guardian must also file annual reports with the court.

**Are there alternatives to a guardianship?**

Yes. A guardianship may not be necessary if the individual executes a durable power of attorney and advance medical directives prior to losing capacity. A guardianship is a costly, time-consuming process, which can be avoided with proper advance planning.