



Guardianship Fact Sheet

Introduction

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, physical person, or both.

Permissibility

To get a guardianship, the ward must be incapacitated. This means the ward has a disability (such as a mental illness), is mentally slow, is a chronic user of drugs or alcohol, or has another condition that makes them unable to manage their 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.

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

A guardian can be any person who is all of the following:

- a resident of the state
- aged 18 years or older
- of sound mind
- not a convicted or unpardoned felon

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

Limitations

A guardian is not free to do what they want with the ward or 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.

Getting a Guardianship: Three Steps

Petition

The petition is filed in the circuit court of the county where the ward lives. The ward must be served with the petition, a 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, 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.

Ending a Guardianship

A guardianship can end for many reasons, including:

- the ward dying or moving out of state
- the judge finding the ward is competent
- the judge finding the guardianship is no longer in the ward's best interests



Options

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 Will

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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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

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