

Guardianship

When parents have a child with a traumatic brain injury, it is important that they understand their rights and the legal system as it applies to caring for their child. Guardianship is often misunderstood. For example, many people believe that parents are automatically the legal guardians of their minor children. Legally, parents are the “natural” guardians of their minor children but not automatically the legal guardians. A minor child (under 18 in most states) needs a legal guardian or conservator when he is orphaned. If a child under 18 inherits property, the parent must be appointed by the court to become the legal guardian of the estate – They cannot automatically control, safekeep or manage their child’s property legally without this appointment.

When a child reaches legal adulthood, parents do not automatically remain the natural guardian. If your child is disabled and over 18, you must seek legal guardianship through the courts in order to decide residence, take care of financial affairs or make medical decisions for him. All adults with disabilities do not require a guardian. This process should only be pursued if a disabled individual’s parents, doctor, psychologist and/or caregiver all agree that they are incapable of making independent and informed decisions. It is a misconception that an individual who is not able to balance a checkbook is in need of a guardian. In today’s world, guardianship for those with disabilities has little to do with the capacity to handle finances. There are other mechanisms for dealing with financial matters such as power of attorney and representative payees for government benefits and trusts. In addition, some states offer limited guardianships, which may give a guardian the right to make medical decisions but not decisions regarding residence.

If you feel your loved one needs a legal guardian, the following information may help. (NOTE: Local law and court rules may be different in each county and state. For specific rules applied to your circumstances, consult a local professional elder law advocate or the National Guardianship Association.)

Guardianship


Guardianship, or conservatorship, is a legal process that occurs when a person can no longer make or communicate decisions about his/her person and/or property. Appointed guardianship may occur when an individual is in need of legal protection and

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Guardian of the Person – Cares for the personal needs of the ward

Guardian of the Estate – Cares for the property of the ward

Plenary Guardianship – Cares for personal needs and the property of the ward.



it is the opinion of the individual’s treating physician (or other caregivers/family/professionals) that they are unable to provide food, clothing or shelter for themselves or manage their own financial affairs. When a court appoints a guardian, they may have the following responsibilities:

- *Determine and monitor residence*
- *Consent to / monitor medical treatment*
- *Consent to / monitor non-medical services (example: education)*
- *Consent to the release of confidential information*
- *Make end-of-life decisions*
- *Act as representative payee*
- *Maximize independence in the least restrictive manner*
- *Report to the court about the guardianship status at least annually*

Guardianship of the estate or property is assigned the following responsibilities:

- *Marshall and protect assets*
- *Obtain appraisals of property*
- *Protect property and assets from loss*
- *Receive income for the estate*
- *Make appropriate disbursements*

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- *Obtain court approval prior to selling any asset*
- *Report to the court on estate status*

When appointing guardianship, courts will take several things into consideration. They will likely select a guardian based on the ability to enhance the disabled person's lifestyle. Guardians are expected to consider the wishes and goals of their ward, include them in making decisions (*when possible*) and advocate on their behalf. It is not the role of the guardian to limit activity or social interactions. When a court appoints a guardian, the following rights may be removed:

The right to...

- *Determine residence*
- *Consent to medical treatment*
- *Make end-of-life decisions*
- *Possess a driver's license*
- *Manage, buy or sell property*
- *Own or possess a firearm or weapon*
- *Contract or file lawsuits*
- *Marry*
- *Vote*

Long-term planning should also be part of the guardianship process. Parents need to consider who will be the guardian for their child when they are no longer able to make decisions. In some states, there are not-for-profit organizations that provide guardianship services. In many states, parents can designate a substitute guardian or can name someone in their will. ❖

*Information taken from the National Guardianship Association
www.guardianship.org.*

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