



DISABILITY KNOWLEDGE SERIES: Guardianship

Why obtain guardianship?

Shortly after his 18th birthday, Danny had an appointment with his psychologist for what was supposed to be a routine medical check. Danny's regular therapist was on vacation and the substitute was not familiar with Danny. The therapist placed a three-day hold on Danny, and his parents were unable to obtain his release or gain access to his records. Why? Because Danny was over the age of 18, his parents no longer had any legal authority to make decisions for him. Guardianship is what gives you that authority.

Who needs a guardian?

A disability does not automatically mean that an individual needs a guardian. For some high functioning individuals, a health care directive and power of attorney may suffice. The law allows someone to be appointed guardian of a person (the "ward") if that person is incapacitated, which means that:

- the person does not or cannot understand how to make or communicate reasonable personal decisions

AND

- the person's behavior shows that he or she is unable to meet personal needs for medical care, food, clothing, shelter or safety, even with technological assistance.

Guardians may have the power to:

- Decide where a person will live
- Have custody of the person
- Decide about personal property, such as clothes and furniture
- Provide or withhold consent for medical care
- Exercise general supervision over the person
- Approve contracts
- Apply for government benefits

A guardian must allow the ward as much personal freedom as possible. If co-guardians are appointed, they must always agree on important decisions.

Responsibilities of a guardian:

- Ensure that needs are met, using government benefits and then the ward's assets
- Take reasonable care of personal property
- Provide an annual report of personal well-being to the court
- Notify the ward annually about his or her right to change the nature of the guardianship

Guardianship Process

The court must appoint a guardian after a hearing is held on a "petition for guardianship". Anyone who cares about the individual who has a disability can petition the court to establish guardianship. Notice of the hearing must be given to all "interested parties" including birth parents, siblings and half-siblings. The individual in need of guardianship must be present at the court hearing, but need not testify. A court-appointed attorney usually represents the individual in need of guardianship.

What if the ward has financial resources?

Having money can cause problems for an individual who has a disability if they need government benefits such as SSI or Medical Assistance. When government benefits are not a concern, one option to help someone manage finances is a conservatorship. This option is typically expensive to establish and to administer because it is supervised by the court. A better option may be to establish a Special Needs Trust or a Supplemental Needs Trust. These types of trusts enable assets to be used for the benefit of the person who has a disability and still be eligible for asset-based eligibility programs, services and benefits. For more information, contact us.

Costs

If the individual in need of guardianship does not have any financial resources, they may qualify to proceed "*in forma pauperis*". This means that the county will pay all fees and we can help you at no cost to you. If the county will not pay our fees, then we do charge a flat fee for our services.

Please contact Jason Schellack at the Autism Advocacy & Law Center, LLC for more information and a free initial consultation. The Autism Advocacy & Law Center, LLC serves all individuals who have a disability, their families and the organizations that serve them.