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Guardianship and Alternatives For Adults with Disabilities

Once a child turns 18, parents no longer have the right to make decisions for their child, even if their child has a significant disability. Different factors should be considered regarding how to best support an individual with disabilities.

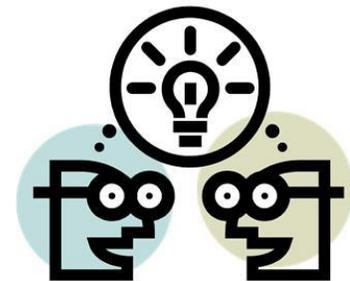
What is Guardianship?

Parents are considered the natural guardians of their children under age 18. Once a child turns 18, parents no longer have the right to make decisions for their child, even if their child has a significant disability. Guardianship is a legal process where the court gives a parent, or other adult, the authority to care for and make ALL decisions for an adult child.

Why the Need for Guardianship for Adults?

Once children turn 18, they are responsible for their own financial, medical and legal decisions. They can sign legally binding contracts and make decisions about where they live and whether or not to go to school. Some parents feel their adult child with a disability is not able to make good decisions and become their child's legal guardian to keep their child safe and protected. However, adult children under guardianship lose some rights and independence, so the decision to seek guardianship is an important one.

The Guardianship order can outlive the initial guardian and may stay with the individual the rest of their life.



Alternatives to Guardianship

It is important for parents to recognize that not all adult children with disabilities need nor should be under guardianship. There are alternatives to guardianship that can provide additional support to adults with disabilities without affecting their independence. When parents seek guardianship over their children, they must be prepared to explain what alternatives they looked at and whether their children only need help in making decisions in some areas, e.g. financial decisions.

Why parents should first consider alternatives to guardianship

- Allows the person with a disability to get support for what they need and puts them in control now, and in the long run.
- Is less restrictive than guardianship.
- Allows the person with a disability to cancel or change these arrangements more freely.
- Vermont law favors individuals to have as much independence as possible.

Examples of Alternatives to Guardianship

The following are legal documents that can be drawn up to help the adult with the disability get support from a trusted adult.

Power of Attorney

Powers of Attorney are convenient and allows for a trusted “agent”, which could be a parent, to conduct business on behalf of the ‘principal’ (in this case the adult with a disability). A Power of Attorney can be broad, allowing the parent to handle the adult child’s banking, buying and selling, bill paying and other personal affairs. The parent would show the Power of Attorney to banks, schools, car dealerships, mortgage companies, and others in order to handle their adult child’s transactions. A Power of Attorney can also be narrow and have a time limit. For example, it can be in effect solely for school purposes until the adult reaches age 22.



Advance Health Care Directive

This document allows the named agent (such as a trusted family friend or parent) to make health care related decisions for the adult child. The document can be broad or very specific.

Representative Payee

An adult child can request that a parent or other trusted individual receive and manage government assistance funds on their behalf. This is a common arrangement with SSI checks. The Social Security Administration can also appoint a Representative Payee on their own initiative.

Voluntary Guardianship

A Voluntary Guardianship is an alternative to an involuntary guardianship, but it is more restrictive than the above methods. In a voluntary guardianship, the person with the disability initiates the court petition. Adults with disabilities who are aware of their need for assistance with their affairs may request a voluntary guardianship and select their own guardian. Once under guardianship, the individual would lose some freedom as the guardian would now have legal authority to make certain decisions for the person.

The process is simpler in a voluntary guardianship in comparison to an involuntary guardianship. A court appointed attorney is not typically assigned to the person in a voluntary guardianship, nor does the judge order an evaluation. However, the judge would need to be satisfied that the individual has a good understanding of the guardianship relationship and that the adult is seeking voluntary guardianship of their own free will. The judge may order a limited evaluation to ensure that the adult seeking guardianship has a good understanding of the guardianship process.

If the voluntary guardianship is granted, the individual can approach the court at any time to withdraw the guardianship. However, if the guardian believes that the person should still be under guardianship, the guardian could pursue an involuntary guardianship over the adult at that time.

Involuntary Guardianship

Alternatives to guardianship may not be appropriate to protect all adult children with disabilities. In an involuntary guardianship matter, the parent (or other person) who wishes to become the guardian initiates the court process. A parent would consider an involuntary guardianship when the adult child with a disability is either unwilling to go under guardianship, or if the person with a disability does not have a clear understanding or capacity to pursue a voluntary guardianship. In an involuntary guardianship case, the court appoints an attorney to represent the adult child. The adult pays the attorney's fees unless they can't afford it, in which case, the attorney will serve pro-bono (at no charge).

The attorney advocates for their client and follows the client's wishes. If the adult child wants to fight the guardianship, the attorney will challenge the guardianship.

If the attorney cannot communicate with his or her client, the attorney can request a Guardian ad Litem from the court. If a Guardian ad Litem is appointed, he or she will meet with the adult and determine what is in the best interest of the person in regard to guardianship, which may or may not coincide with the wishes of the individual being considered for guardianship.

The court will order an evaluation. The evaluator will provide an opinion on whether the adult is in need of guardianship. The evaluator will look at different areas such as the person's ability to manage finances, care for themselves and generally manage their affairs. The evaluator generally meets with the individual, the individual's family and also reviews records, such as Individualized Educational Programs (IEPs). The evaluation cost will be paid by the person being evaluated, unless they are determined to be indigent (poor). In which case, the State of Vermont will pay the evaluation fees.

A hearing is generally scheduled about two months after the initial petition is filed. The

hearing is informal and private. The judge will review all the evidence and decide on whether or not the person is in need of guardianship and the extent of the guardianship. The judge may decide to give full guardianship where the guardian can make broad decisions regarding the individual or it may be a more limited order, giving the guardian control solely over financial matters, for example. The judge will appoint a guardian, which may not be the same person who applied for guardianship. The judge will instruct the guardian on his/her responsibilities.

What is the process of applying for Involuntary Guardianship?

- File petition/form in probate court in the county where the person with the disability lives. File no sooner than 4 months before the individual turns 18.
- Pay the petition fee (currently \$105). Persons who are petitioning to become a guardian and cannot afford this fee can request a waiver.
- The Judge will order an evaluation of the person with a disability.
- The Judge will appoint an attorney to represent the person with a disability.
- If necessary, the Judge will appoint a Guardian ad Litem to determine what is in the best interest of the individual and report findings to the court.
- A hearing will take place and the judge will determine if the person is in need of guardianship.

Public Guardians

Sometimes there is a person who is in need of guardianship, but no one steps forward or is able to take on the responsibility of becoming the person's guardian. In this situation, the Office of the Public Guardian may be able to assist. Public Guardians are an option for (1) individuals with developmental disabilities, or (2) individuals with a mental illness who are above age 60. If a person is found to be in need of guardianship, a publicly paid guardian will serve as guardian until a private guardian can be placed.

What happens when I can no longer fulfill my responsibilities as a Guardian?

One benefit of having a legal guardianship in place is that another responsible individual can assume the role once you are no longer able to do so. The court would make the appointment, but the whole process of guardianship would not have to be repeated.

Parents can appoint successor guardians for the minor children and adult children who are under legal guardianship in their Wills.

My son just turned 18 and is on an IEP. The school staff told me I could no longer attend IEP meetings unless I am my son's guardian. Is this true?

When your son turned 18, he became responsible for making all of his own decisions, including managing his own IEP. However, your son can invite you or anyone he wishes to the IEP meetings. It is important to note that you as a parent will take a secondary role and that the school will be looking to your son to make decisions, including requesting him to sign documents and consent to evaluations. You may wish to discuss with your son the importance of not signing any documents or making other important decisions without first reviewing them with you or another trusted adult.

A power of attorney for educational purposes can also be helpful as it would authorize you or another trusted adult to step in to assist your son if needed.

Resources

[Social Security Administrations](#)
Frequently Asked Questions for Representative Payees.
800-772-1213

[Special Needs Alliance](#)

A national, non-profit organization committed to helping individuals with disabilities, their families and the professionals who serve them.
877-572-8472

[Vermont's Division of Disabilities and Aging Services](#)

Guardianship for information on alternatives to guardianship, types of guardianship, the process to follow, and resources.
802-828-3623



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