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## Guardianship and Alternatives for Adults

Once someone turns 18, they are a legal adult, and they become responsible for their own financial, medical and legal decisions. As a youth with a disability approaches 18, they and their families should explore their ability to make their own decisions and develop a long-term plan that is right for them.

### **Guardianship**

There are several levels of support that can be provided to young adults, with different degrees of independence. The most restrictive option is full guardianship. Guardianship is a legal process where the court gives a parent, or other adult, the authority to care for and make decisions for an adult child. Families should consider alternatives to guardianship that allow a person with a disability to get support for what they need while maintaining as much independence as possible.

### **Alternatives to guardianship**

Some alternatives to guardianship are legal documents that spell out the levels of support that are provided to an adult with a disability. Other alternatives, like Supported Decision Making, are plans that are developed through a process that does not require a lawyer.

### **Supported Decision Making (SDM)**

Supported Decision Making is a way for people with disabilities to get help in making their own choices. Unlike in guardianship, the person with a disability is still the ultimate legal decision maker. Many individuals can reach their maximum potential and live independent lives by using the SDM model. Having a team of trusted people who can provide support and input about life decisions, may be the only tool one needs to be successful. Supporters assist in the decision-making process but the individual with the disability always makes the final decision. In order to determine whether SDM is the right plan for a young adult with a disability, and information on how to put that plan in place, check out Vermont Family Network's [Supported Decision Making Fact Sheet](#).

### **Power of Attorney**

Powers of Attorney are legal documents that allow 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 a parent to handle the adult child’s banking, buying and selling, bill paying and other personal affairs. A Power of Attorney can also be narrow and have a time limit.

### **Advance Health Care Directive**

This legal document allows a named agent (such as a trusted family friend or parent) to make health care related decisions for the adult child. The directive 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 Supplemental Security Income (SSI). The Social Security Administration can also appoint a Representative Payee on their own initiative.

### **Voluntary Guardianship**

Voluntary Guardianship is a court petition that is initiated by a person with a disability, and is more restrictive than a Power of Attorney, Advance Health Care Directive, or Representative Payee. 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 guardian would now have legal authority to make certain decisions for the person. If a 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 for all adults with disabilities. Families might consider involuntary guardianship when an adult with a disability is either unwilling to go under guardianship or does not have a clear understanding or capacity to pursue voluntary guardianship or other alternatives. In an involuntary guardianship case, a family member who wishes to become the guardian will file a petition in the probate court in the county where the person with the disability lives. This cannot be done earlier than 4 months before the person turns 18.

The attorney will advocate for their client and follow the client’s wishes. If the adult child wants to challenge the guardianship, the attorney will act accordingly. If the attorney cannot communicate with their client, the attorney can request a Guardian ad Litem who will meet with the adult and determine what is in the best interest of the person regarding guardianship.

The court will order an evaluation to determine 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 reviews records, such as Individualized Education Programs (IEPs). The evaluation cost will be paid by the person being evaluated if they have the resources, otherwise the State of Vermont will pay for it. A hearing is scheduled after the initial petition is filed, and this hearing is informal and private. A judge will review all the evidence and decide whether the person is in need of guardianship.



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## Public Guardians

Sometimes there is a person who is in need of guardianship, but no one is available to take on that responsibility. 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 if a parent can no longer fulfill their responsibilities as a guardian?

Another responsible individual can assume the role if the guardian is 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 their adult children who are under legal guardianship in their will.

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

When your child turns 18, they become responsible for making all their own decisions, including managing their own IEP. This is one reason why it is important to begin thinking about and talking with youth about their decision-making capabilities before they turn 18 so that you can develop the most appropriate plan for them.

If a youth is their own guardian, they can invite you or anyone they wish 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 child to make decisions, including requesting them to sign documents and consent to evaluations. You may wish to discuss with your child 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 may be helpful as it could authorize you or another trusted adult to step in to assist your child if needed. Ask your school if there is any specific paperwork they will accept for this purpose.

## Vermont Resources

[Green Mountain Self-Advocates](#)

[Office of Public Guardian](#)

[Legal Aid Disability Law Project](#)

[Vermont Judiciary](#)

[Disabilities, Aging and Independent Living-Developmental Disabilities Services Division](#)

## National Resources

[Social Security Administration: Frequently Asked Questions for Representative Payees](#)

[National Resource Center for Supported Decision Making](#)

[Special Needs Alliance](#)

*Please contact an attorney if you need legal advice regarding your personal situation.*

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