

Guardianship

- **What is a guardianship?**

- A guardianship is a court approved decision that gives one person the legal authority to care for and make some decisions for another person.
- The person authorized to make the decisions is the guardian.
- The person receiving assistance is the protected person.

- **How does a court decide that a guardianship is needed?**

A court may appoint a guardian for an adult if it finds two things:

- The adult does not have the decision-making capacity to care for their own safety or the adult can't provide for their own necessities like food, shelter, clothing, or medical care, and
- The appointment of a guardian is in their best interest.

- **What powers does a guardian have?**

Every guardianship order from a judge should be specific to the needs of the protected person involved. Some of the powers a guardian may be granted include:

- The ability to make decisions about the protected person's care, maintenance, health, education, welfare, and safety
- Establish the protected person's permanent residence
- Take care of the protected person's personal property and animals
- Assist the protected person with self-reliance and independence
- Consent to and arrange health care treatment and other services
- Consent to and arrange vocational and educational services
- Facilitate supportive relationships and interactions between the protected person and family members and other significant persons
- Place reasonable restrictions on communication with others

A guardian may also have additional powers only if approved by the court.

These include:

- Transferring the protected person to a nursing home or other facility
- Consenting to the withdrawal of life-sustaining procedures
- Consenting to the sterilization of the protected person
- Consenting to an abortion on the protected person
- Denying any interaction between the protected person and another person

- **How is a guardianship established?**

In order for a protected person to have a guardian specific documents must be filed with the court.

- First, a Petition is filed. A Petition is the legal document that asks the court to take action.
- A person with an interest in the well-being of another adult will file a Petition with the court
- A person who wants a guardianship for themselves may also file a Petition with the court.
- Next, after the petition is filed, the person who may be the protected person will get a copy of the petition telling them they have 20 days to file an Answer.
- An Answer is a response to the Petition. The Answer should state whether the person agrees or denies with the statements in the Petition.
- After the Petition and Answer are received there is a hearing.
- The court will set the time and place for the hearing. It is usually 20 or more days after notice is given to the respondent (potential protected person)
- At the hearing, the court will consider the reasons why the petitioner (person who filed the petition) believes a guardianship is needed.
- The court will also consider any evidence that the proposed guardian will not be a good guardian for the respondent.

- **Is there always a hearing before a judge?**

Sometimes the parties involved can solve the question of whether or not a person needs a guardian outside of a court hearing. This can be through a process called Mediation. Mediation involves bringing in a neutral third party to help facilitate a discussion to see if an agreement can be reached without a court hearing.

- One of the parties may request mediation or the court may order a mediation on its own. The parties are not required to reach agreement but must attend and participate in good faith.
- Mediation can be waived if the case involves domestic or elder abuse.