

# Guardianship

Westchester Arc



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The goal of Guardianship Services is to insure the security and welfare of the person who has a disability. Westchester Arc strives to help the individual achieve the highest degree of intellectual, social and vocational growth and to assist him/her to live as fully and independently as possible. Westchester Arc staff advocate for the individual, oversee his or her residential and day placement and regularly visit the individual. Westchester Arc also helps families to apply for guardianship for their loved ones and is available to answer any questions.

A committee of involved professionals and parents oversees Westchester Arc Guardianship Services.

learn about us @ [www.westchesterarc.org](http://www.westchesterarc.org)

# Guardianship

## What is Guardianship?

In New York State, at the age of 18 a person is presumed to have the capacity to make his/her own decisions. Guardianship provides another individual or agency, perhaps a parent or the Arc, with the authority to make some or all decisions for that person if he/she does not have the ability to make his/her own decisions. Guardians are expected to provide assistance, guidance and protection and to advocate for that person's rights, privileges and entitlements. A guardian is not responsible for the financial support of the individual with disabilities.

## Who Needs a Guardian?

Guardianship should be part of a long-term plan for a person who is developmentally disabled if that person is unable to make decisions concerning his/her housing, education, medical care, etc. It should also be considered if the person does not have the capacity to access benefits and entitlements for which he/she is eligible. Not all persons who are developmentally disabled need a guardian. If you believe your child or family member will not be capable of managing these or other matters, then guardianship may be appropriate.

## Who Can Be A Guardian?

Parents, siblings or other interested persons can be named as guardian for persons with mental retardation or other developmental disabilities. A properly empowered not-for-profit corporation, such as NYSARC, Inc., can also be designated as a guardian of the person only. The law also permits the families to name a standby or alternate standby guardian to succeed the primary guardian when that person can no longer serve. This assures continuation of the guardianship.

## NYSARC, Inc. as Guardian

Through its local chapters, NYSARC, Inc. can serve as guardian or standby guardian for a disabled person. If NYSARC, Inc., is appointed standby guardian, it will become the person's guardian when the original guardian is no longer able to serve. If NYSARC, Inc., is appointed as guardian, or assumes that role upon the death or incapacity of the guardian, it will, through the local chapter, perform all duties for which a guardian is responsible, such as providing advocacy, assistance and protection.

## Westchester ARC Guardianship Trust

The guardianship trust is intended to guarantee the long-term availability of guardianship services. It is a vehicle by which parents can provide a "fair share" of their estate for the supplemental needs of their child. The assets of this pooled irrevocable trust are invested and managed by The Bank of New York and the income is expended for the benefit of the primary wards of the Westchester Arc Guardianship Program. At present the income is used for such things as camp tuition, birthday gifts and annual barbeques and holiday parties.

## Becoming a Guardian

The individual or agency wishing to have a court appoint a guardian must prepare a Petition. The Petition contains information about the person who may need a guardian, such as the person's immediate family and his/her address. It is necessary to include two certificates attesting to the person's disability, completed by two physicians or one physician and one psychologist. Consent forms from those named as standby guardians and other documentation must also accompany the Petition. All materials are submitted to the Surrogate's Court with a small fee. The Court then sets a calendar hearing date. Prior to the hearing, the judge appoints an attorney, called a Guardian ad-Litem, to represent the interests of the disabled person. Usually the judge does not require a full hearing. At the conclusion of the proceeding, the Court issues a Decree and official Letters of Guardianship. Some families may wish to have an attorney assist them in this process, but it is not necessary or required.

## Application Process

Staff are available to assist families completing paperwork for an application for guardianship. Westchester Arc can also assist with changes in existing guardianship succession.

When families ask Westchester Arc (through NYSARC, Inc.) to be in the guardianship succession, a family which is financially capable will be asked to pay a fee. Fees are based on actuarial tables. No family will be denied services because of inability to pay.



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