

# About Guardianship

## What Is Guardianship?

In New York State, parents of persons with intellectual and other developmental disabilities are considered the natural guardians of their children until their eighteenth (18) birthday. After a person reaches 18 years of age, he or she is assumed to be a legally competent adult and able to manage his or her own affairs.

Guardianship is a planning alternative that enables parents and relatives to ensure that they, or others that they designate, may act as advocates with legal authority and maximize all necessary and available supports and resources for the benefit of their family member who may require some level of assistance in managing their personal and/or financial affairs. Legal guardianship cannot be granted from, or specified in, a will.

## What Are The Different Types Of Guardianship?

*The Guardian of the Person* is appointed by the Court to manage the personal affairs of the individual with intellectual and/or other developmental disabilities, and is responsible to protect and assist the individual who because of their intellectual or other developmental disability is not able to manage their affairs and adequately provide for their own care or custody.

*The Guardian of the Property*, under supervision of the Court, is responsible for the control of any or all financial resources and property matters of the ward. The specific powers are limited to acting only in property matters and investments or in the expenditure of income and other assets. The Guardian of the Property is typically required to provide an accounting to the court every year.

*The Standby/Alternate Standby Guardian* is a person appointed to serve upon the death, incapacity or renunciation of the primary guardian. The standby guardian is permitted to assume duties immediately, subject to court confirmation within 60 days of the death, incapacity or renunciation of the primary guardian. An alternate standby guardian can be appointed by the court to fulfill the duties of the standby guardian should the standby guardian become incapable or unable to serve.

## What Is An Article 17-A Guardianship?

An Article 17-A Guardianship is a legal proceeding which takes place in the Surrogate's Court of the proposed wards' county of residence and designates a parent, sibling, other relative, friend, or organization to act on behalf of an individual with intellectual and other developmental disabilities. Article 17-A provides for continued legal guardianship of individuals who have intellectual and other developmental disabilities even after they reach the age of 18 years old.

In order for a Court to appoint a guardian, it must be satisfied that the guardianship is necessary and in the best interest of the person with intellectual and other developmental disabilities. Certifications by one licensed physician and one licensed psychologist or two licensed physicians, one of which has experience working with individuals with developmental disabilities, who are familiar with the care and treatment of the individual are required when filing a petition for guardianship.

## Who Is Eligible To Receive The Benefit of Guardianship?

Usually, wards are typically individuals over the age of 18 who do not possess the cognitive, communicative or educational capacity to make autonomous decisions or to provide informed consent for personal, medical and/or financial affairs.

## Who Are Guardians?

Primarily, guardians are family, friends and other relatives. Under Article 17-A, guardians can be a not-for-profit corporation, such as NYSARC, Inc.

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## **What Are The Advantages Of Guardianship To The Ward?**

A responsible guardian offers protection and support to vulnerable individuals by making decisions that harmonize with the individual's values and preferences, and to ensure respect for the individual's basic human rights, as well as access to benefits and entitlements.

## **Are There Alternatives to Guardianship?**

Sometimes a person who would otherwise need a guardian can be served in a less restrictive way. The following are some alternatives to guardianship:

- Advance Medical Directive – Health Care Proxy – Living will
- Personal Caregiver
- Power-of-Attorney
- Representative Payee
- Trusts

## **Where Can I Get More Information About Guardianship?**

For more information on guardianship or guardianship alternatives, you may contact the following:

Office of Mental Retardation and Developmental Disabilities (OMRDD)  
44 Holland Avenue  
Albany, New York 12229  
[www.omr.state.ny.us](http://www.omr.state.ny.us)

Commission on Quality of Care for the Mentally Disabled (CQC)  
401 State Street  
Schenectady, New York 12305  
(518) 388-1270  
[BillC@cqc.state.ny.us](mailto:BillC@cqc.state.ny.us)  
[www.cqc.state.ny.us/homepage.htm](http://www.cqc.state.ny.us/homepage.htm)

The National Guardianship Association (NGA)  
National Guardianship Foundation (NGF)  
1604 N. Country Club Road  
Tucson, Arizona 85716-3102  
Tel# (520) 881-6561 Fax#(520) 325-7925  
[www.guardianship.org](http://www.guardianship.org)