

Understanding Guardianships in New York State



When an individual lacks the ability to care for him or herself and lacks the ability to make independent decisions, a Court may appoint a guardian for that individual. Often the guardian appointed is a family member, but the Court may appoint an independent third party. Guardians can be appointed on behalf of a person with an intellectual or developmental disability, a minor child, or an adult who has become incapacitated. Below are some of the key points to each type of guardianship:

Guardianship for an Adult with an Intellectual or Developmental Disability

- Often used for an individual with an intellectual or developmental disability who has reached the age of 18 and cannot make his or her own decisions
- Governed by Article 17-A of the Surrogate's Court Procedure Act
- Commonly initiated in the Surrogate's Court of the county in which the disabled individual resides
- Requires the filing of a petition supported by certifications from two doctors or from one doctor and one psychologist
- A family member such as a parent is frequently appointed as guardian
- Typically provides broad decision-making authority over the disabled individual, including choices about finances and/or medical treatment

Guardianship for a Minor

- Used when the parents of a child under the age of 18 are deceased, unavailable, or become incapacitated, requiring the appointment of a guardian for the child
- Governed by Article 17 of the Surrogate's Court Procedure Act
- Commonly initiated in the Surrogate's Court of the county in which the child resides
- Requires the filing of a petition made by any person on behalf of the child
- Parent(s) of minor children often include guardian and trustee designations in their Wills to provide for who will take care of the child in the event of the parents' passing, avoiding the need for a court guardianship proceeding

Guardianship for an Adult Who is Alleged to be Incapacitated

- Often used for an adult who was previously able to independently make his or her own decisions but who has later become incapacitated due age, illness, or an accident
- Governed by Article 81 of the Mental Hygiene Law
- Typically initiated in the Supreme Court of the county in which the alleged incapacitated person resides
- Powers granted to the guardian, if appointed, must be narrowly tailored to the specific needs of the alleged incapacitated person
- This type of guardianship proceeding may be avoided with the signing of advance directives such as a Power of Attorney and/or Health Care Proxy

We often initiate guardianship proceedings when necessary. Some guardianships can be avoided with advance estate and disability planning documents in place such as Wills, trusts, Powers of Attorney and Health Care Proxies. A proper plan can prove to be invaluable in the event of illness or death. As always, we are here to answer any questions you may have.

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Our mailing address is:
600 Old Country Road
Suite 444
Garden City, NY 11530
516-228-6522

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