

DISABILITY & AGING RIGHTS



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PERSONAL DECISION MAKING

Self-Determination/Guardianship Defense

Adults with disabilities, including older adults who have physical, cognitive, sensory or mental impairments, have the right to make their own decisions including about healthcare, how to spend their money, where to live and personal relationships. In Illinois, an adult is anyone 18 years or older. This fact sheet will provide a basic understanding of adult guardianship and how to protect your right to make your own decisions.

What is a guardian?

If a judge decides in court that you are unable to make good decisions for yourself, the judge may appoint a guardian to make important decisions for you. Just because you have a disability or medical condition does not mean you need a guardian. A guardian takes on the legal responsibility to manage those areas of your life that the judge has decided you are unable to manage yourself. A guardian can be appointed to make personal decisions for you (guardian of the person), financial decisions for you (guardian of the estate) or both (plenary guardian). Once a guardian is appointed by a judge, it can be difficult to get a judge to end the guardianship. So, it is important to know how to avoid a guardianship or remove an existing guardianship if you feel you do not need one.

How do you know if someone is your guardian?

It can be hard to know if someone is your guardian. Sometimes people (like parents) think they are the guardians of their family member, but they may not be. Once you reach age 18, your parents are not your guardians unless they have been appointed by a judge. When a guardian is appointed by the judge, the guardian is given “Letters of Office” – a paper that shows that he or she was appointed by a judge to make decisions for you. Equip for Equality can help you find out if someone has been appointed guardian for you, if you need help figuring this out.

Who can ask that a guardian be appointed?

Anyone may ask a judge to appoint a guardian for you. The person or agency that asks the judge to appoint a guardian for you is called the “petitioner.” The state can petition to appoint itself or another person as your guardian. Family members, service providers or other agencies can also petition for guardianship.

How do you know if someone has asked a judge to appoint a guardian for you?

The law requires that you be informed in writing at least 14 days before a court hearing to decide whether you will have a guardian. If you receive a notice of a court hearing to determine whether a guardian should be appointed for you, contact a lawyer right away so that you can understand all of your legal options.

What happens at the hearing?

The purpose of the hearing is to allow both sides (the petitioner and you) to present information so the judge can decide whether you need a substitute decision maker (guardian) for some or all of your decisions. It is very important to attend the hearing and to prepare for it by contacting a lawyer as soon as you receive the notice. You should also help the lawyer contact people who know about your abilities to come to the hearing and testify on your behalf.



What are your rights at the hearing?

You have the right:

- To be present at the hearing.
- To be represented by a lawyer.
- To ask for a jury to hear your case.
- To present evidence and to confront and cross-examine your witnesses.
- To ask the judge to appoint an independent expert to examine you and give you an opinion about your need for a guardian.
- To ask that the court hearing be closed to the public.
- To tell the court that you do not want a guardian.
- To tell the court who you would prefer to have as your guardian if the judge decides that a guardian needs to be appointed.

What are the different types of guardianship?

- **Temporary guardianship:** A temporary guardian may be appointed by a judge without the parties present for emergency reasons. A temporary guardian acts as guardian for a maximum of 60 days.
- **Limited guardianship:** A limited guardian may be appointed when a judge decides that you are unable to make your own decisions in some, but not all, areas of your life. In that case, the guardian's authority will be limited to only certain kinds of decisions, such as medical decisions.

- **Plenary guardianship:** A plenary guardian is appointed when a judge decides after a hearing that you are completely unable to make your own decisions. A plenary guardian has full decision-making authority over your personal and financial decisions.

What is a guardian ad litem?

A guardian ad litem is a person appointed by a judge to investigate and collect information for the judge. The judge may also ask the guardian ad litem to make recommendations about some of the issues in the legal case. The guardian ad litem is NOT your guardian and is not your lawyer, but instead is appointed to help the judge make decisions based on your best interest, instead of your expressed interest.

Does my guardian have to honor my wishes?

If you have a guardian, the law says the guardian must follow your wishes as much as possible and support your independence and self-reliance. A guardian of the person must make decisions as you would have done if competent, guided by your stated wishes. If your guardian cannot determine your wishes, your guardian must make decisions in your best interest.

Are there alternatives to guardianship?

Yes. Other legal and nonlegal tools can help people with disabilities manage their affairs in ways that are less intrusive and often more effective than a guardianship, such as:

- Power of attorney to transact financial affairs
- Power of attorney for health care
- Health care surrogacy
- Mental health advance directives
- Representative payees
- Bill-paying assistance programs
- In-home supports
- Advocacy services ■

For more information:

Illinois Guardianship and Advocacy Commission (GAC):

1-866-274-8023 (statewide general information) or **1-708-338-7500** (information for out-of-state callers)

Frequently asked questions about guardianship: www.gac.state.il.us/guardfaq.html

Equip for Equality: **1-800-537-2632** or **1-800-610-2779** (TTY)

Decision-making Rights Overview/FAQ/Resources:

www.equipforequality.org/issues/self-determination-guardianship



Equip for Equality

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www.equipforequality.org
1-800-537-2632
1-800-610-2779 (TTY)

Illinois Department on Aging

One Natural Resources Way
Suite 100
Springfield, IL 62702-1271

Senior HelpLine:

1-800-252-8966
1-888-206-1327 (TTY)
www.illinois.gov/aging

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