



Georgia Department of Human Services

Adult Guardianship – Key Concepts for I&R/A Specialists

Stronger Families for a Stronger Georgia



*Division of Aging Services
Georgia Department of Human Services*

August 2016

Vision, Mission and Core Values

Vision

Stronger Families for a Stronger Georgia.

Mission

Strengthen Georgia by providing Individuals and Families access to services that promote self-sufficiency, independence, and protect Georgia's vulnerable children and adults.

Core Values

- Provide access to resources that offer support and empower Georgians and their families.
- Deliver services professionally and treat all clients with dignity and respect. Manage business operations effectively and efficiently by aligning resources across the agency.
- Promote accountability, transparency and quality in all services we deliver and programs we administer.
- Develop our employees at all levels of the agency.



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Disclaimer!

Each state has their own laws on guardianship.

This presentation is an overview of the key concepts of guardianship that are common to most states.

I am not an attorney and this presentation is not to be construed as legal advice.



Agenda

1. Common Questions on Guardianship and Powers of Attorney
2. Health Care Matter Options
3. Financial Matters Options
4. Guardianship Process
5. When is the Right Time to Seek Guardianship?



Sound Familiar?...

- My mother won't go to the nursing home so I need to become her guardian so she'll go.
- The doctor told us dad is incompetent because he was just diagnosed with dementia and we need to get guardianship. We have his power of attorney.
- My brother has schizophrenia and won't take his medication. I was told I need to get guardianship because he won't sign a power of attorney.



A Place to Start

What problem are you
trying to solve?

What issues are you
trying to address ?



Decision-Making Tools for Health Care Matters

Advance Directives:

- Health Care Power of Attorney (HCPOA)
- Living Will

State Laws



Health Care Power of Attorney

- A legal document that gives someone else the right to act on your behalf.
- Allows you to name a person, or persons, to communicate your medical and other related decisions
- Ability to write specific instructions



Living Will

- Addresses end-of-life medical care in specific circumstances for a limited number of decisions
- Instructions from you that go directly to medical providers – in other words, you are not naming a person to make these decisions for you



Decision-Making Tools for Financial Matters

- Financial Power of Attorney (POA)
- Joint accounts
- Representative Payee
- Living Trust



What is Guardianship?

Guardianship is a legally created relationship.

It is a court process in which:

- a person is declared legally incompetent
- decision-making rights are removed from the person and given to another person or agency



Decision-making rights are removed
and given to another person(s) or
agency.

This means the other person(s) or
agency has the legal right to make
decisions for the person.



Terms

Guardian of the person – individual or agency appointed to make medical and personal decisions

Guardian of the property – individual or agency appointed to make financial and property decisions



Terms

Ward – the individual who has a guardian or conservator appointed to make decisions on their behalf

Proposed Ward – the individual who is the subject of a guardianship petition



Person-Centered Terms

Person Under Guardianship:

- The individual who has a guardian or conservator appointed to make decisions on their behalf

Respondent:

- The individual who is the subject of a guardianship petition



Guardianship Process

- Petition, or some type of legal paperwork, is filed with the appropriate court
 - Filing fees
- Notice is sent to respondent and family members/friends listed in the petition



Guardianship Process

- An evaluation of the respondent is performed – LCSW, physician, psychologist, panel of practitioners, etc.
- Some states will appoint an attorney to the respondent if one is not hired by the respondent
- A hearing is scheduled and held



Guardianship Process

- A judge will hear evidence and decide:
 - does the person meet the legal standard of incapacity
 - if the person is deemed to meet the legal standard of incapacity, the judge will appoint a guardian of person and/or property
 - which decision-making rights are removed



Decision-Making Rights on the Table

Of person:

- Where to live
- Consent to medical treatment
- Marry
- Recreation, vocation, education
- Other health care decisions

Of property:

- Write checks
- Make deposits
- Enter into contracts
- Buy or sell property
- Manage income
- Pay bills



Types of Guardianships

Plenary

Limited

Emergency

Temporary



Court Monitoring and Oversight

- Final order, Oath and Letter of Guardianship
 - Guardian of Person
 - Personal status report
 - Plan of care
 - Guardian of Property
 - Inventory
 - Asset management plan



Rights that Remain

The right to:

- Dignity and respect
- Have a guardian who acts in the best interest of the person
- Communicate freely and privately with others
- The least restrictive form of guardianship assistance available
- Be restored to capacity at the earliest possible time



Guardianship Does Not...

Guardianship does not remove free will from an individual.

It does not remove personal opinions, wishes, preferences, likes, dislikes or feelings.

It does not remove the ability of a person to make a decision.



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What problem are you
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Possible Questions to Ask

- What is the decision(s) to be made that leads you to think you need guardianship?
- What can't you do for this person that guardianship will solve?
- Whose life is going to be made easier and better by guardianship?



When is the Right Time to Seek Guardianship?

When there are

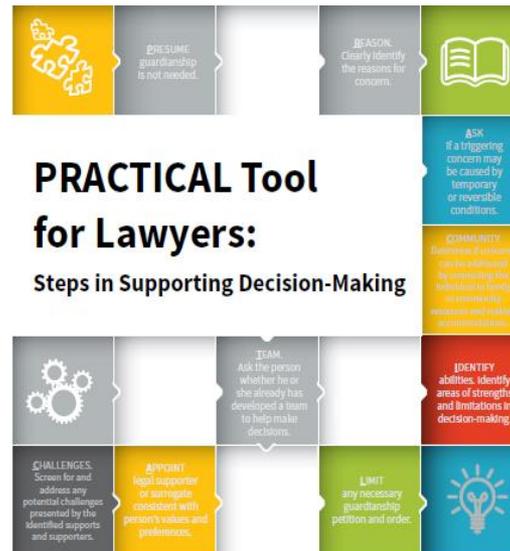
**absolutely no other options
available**

to address the decisions that need to be made.



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PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making



Jointly produced by the
Commission on Law and Aging;
Commission on Disability Rights;
Section on Civil Rights and Social Justice; and
Section on Real Property, Trust and Estate Law



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“The typical ward has fewer rights than the typical felon...By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.”

Claude Pepper, Subcommittee on Health
& LTC of the House Select Committee
on Aging, (Comm. Print 1987)



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