

# Becoming a Legal Guardian

What to Do When Your Loved One  
Can No Longer Manage Their Personal  
and Financial Interests



The legal system recognizes that some adults, whether due to disease, dementia, mental deterioration, or disability, are unable to protect their own self-interests. If the court has deemed an individual incapacitated under the standards outlined in the state's Mental Hygiene Law, the court will then appoint a designated guardian or conservator. Typically a family member or loved one, the Guardian then becomes responsible for managing the legal, medical, and financial affairs of the incapacitated individual. Legal guardians often address outstanding issues, such as Medicare/Medicaid applications, estate planning, and health care decisions.

The process of becoming a court-appointed legal guardian for an incapacitated adult is lengthy and complex. An experienced attorney can help guide you through the process of becoming a legal guardian, and assist you with the legal responsibilities of caring for your loved one.

This guidebook gives an overview of the requirements and responsibilities of court-appointed guardians. As you read through, please contact us with any questions that you have.



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## How Do I Become a Guardian?

The first step in the guardianship process is a court hearing to deem the individual in question incapacitated under the standards of the law. At this hearing, the court will assign someone, typically a family member, as the designated guardian. However, this does not grant you the powers of guardianship. In order to complete your designation, you must obtain an Order and Judgment and receive a Commission to Guardian.

### Order and Judgement

The Order and Judgment is an official document that declares you as the person appointed as guardian in the initial hearing. This document is prepared by your attorney, and then must be submitted to the court and all parties who were present at the hearing. This order is then reviewed and signed by the judge, and becomes the document that formally sets forth your powers as guardian.

### Commission to Guardian

The Commission to Guardian is what officially instills in you the power to act on behalf of your loved one as their legal Guardian. The commission is only issued after all formal documents, including consent, designation, and bond, have been filed with the county clerk. These are notarized documents that declare your intent to act as a legal guardian, contract your intent to act in the best interest of the incapacitated individual, and insure their finances and personal documents against any intentional misuse on your part.

## What are the First Steps I Must Take as a Guardian?

The first 90 days as a legal guardian are demanding and eventful. All appointed guardians are required to attend an official training course, from which you must receive a Certificate of Attendance to be submitted to the Office of Court Administration. You must also declare yourself as the guardian and administrator of all of the assets and accounts of the incapacitated person. After the first 90 days, an initial report is due to the court examiner, which must include:

- ☑ A copy of the Certificate of Attendance
- ☑ Proof that all the incapacitated person's assets are now titled in your name
- ☑ Written explanation for any assets not titled in your name
- ☑ A copy of the Real Property filing
- ☑ Medical report on the incapacitated person
- ☑ Proof that you have filed a Last Will & Testament for the incapacitated person
- ☑ List of disbursements (expenditures on behalf of the incapacitated person)



## What are My Continuing Responsibilities as a Guardian?

The Mental Hygiene Law leaves a significant amount of discretion with regard to the rights of the incapacitated person, and as such, the guardian only has powers expressly granted by the court. courts may sometimes grant the guardian the authority to only manage the financial interests of the individual, and sometimes only their personal and medical decisions, but most often the court grants the guardian power over both. Throughout the remainder of the incapacitated person's life, the guardian is responsible for maintaining inventory of the individual's finances, creating a budget of expenses for their needs, and spending any money accordingly. Guardians are also responsible for determining if the incapacitated individual is eligible for any government or private benefits, such as Social Security, Pensions, and Medicare/Medicaid, and managing any applications or benefits. With regards to personal needs, the guardian is responsible for overseeing medical and health related services for the individual, and has the authority to make medical decisions on behalf of the incapacitated person, including residential care and end-of-life care determinations. Reports on all of these decisions, as well as the financial activities, must be detailed in the Guardian's Annual Report, which is filed with the court examiner every year in the month of May.