

A Guide to Adult Guardianship



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1 | WHAT IS ADULT GUARDIANSHIP?



1 | WHAT IS ADULT GUARDIANSHIP?

A **Guardianship** or **Conservatorship** is a legal responsibility issued by a judge to a responsible adult to make decisions involving another person's health care, daily life, or finances, and lasts for as long as the person cannot make decisions.

In some cases, the Guardian is the primary caregiver of the protected person. However, according to the Court, the guardian is responsible for ensuring that the protected person is receiving proper care, and **is not** responsible for actually providing that hands-on care themselves. Guardians can live out-of-state and still fulfill their duties as Guardian.

Becoming a Guardian is a difficult, yet often necessary decision. Guardians accept a lot of responsibility, and are often the reason their loved one receives the best care and support in their remaining years.

**Adult guardianships
in Indiana are
expected to increase
300% by 2030**
(Jenuwine, 2011)

2 | WHEN TO SEEK GUARDIANSHIP





2 | WHEN TO SEEK GUARDIANSHIP

In order to establish guardianship over an individual, that person must be deemed incompetent by a physician or an attorney. An official Cognitive Evaluation should be conducted keeping in mind various factors that could affect impairment such as, hearing loss, meeting time and location, and the possibility of undue influence.

Instances in which guardianship may be necessary include:

- You or a loved one may not be able to handle critical affairs due to incapacitation
- Severe harm is likely to affect the individual if they do not have someone to make decisions on their behalf
- There are no agreements, like power of attorney/healthcare, to manage the decision-making ahead of time
- Guardianship may also be ideal when the existing voluntary agreement is not functioning as it should
- The individual is not in a safe living environment or is refusing to move somewhere that is best suited for their physical, mental or medical needs



3 | TYPES OF GUARDIANSHIP





3 | TYPES OF GUARDIANSHIP



Person vs. Estate



A guardianship over the **person** refers to the healthcare and well-being decisions on behalf of the protected individual, or the person the Court has deemed incompetent. These decisions can include important medical decisions and housing decisions.

A guardian over an individual's **estate** is responsible for overseeing and managing the proper investment and financial affairs of the protected person.

Nearly half of all adult petitions are for individuals with Dementia or cognitive impairment
(Jenuwine, 2011)



4 | RESPONSIBILITIES OF A GUARDIAN



4 | RESPONSIBILITIES OF A GUARDIAN

Assuming the role of a guardian is an important responsibility. Guardians perform multiple duties to boost the welfare of the protected adult. An Indiana court may assign various responsibilities to a guardian for an incapacitated older person. The roles the court gives to the guardian depend on the situation of the disabled individual. Here are some primary responsibilities of an adult guardian:

- Managing the protected individual's healthcare
- Managing the protected individual's assets and property
- Providing the court with regular reports on the progress of the protected individual
- Helping with appropriate and safe placement of the protected individual
- Helping the protected individual start their recovery journey and work towards regaining their independence

There are also things guardians are not able to do. For example, the guardian cannot sell the incapacitated person's real estate, terminate their guardianship, or relocate the protected individual without prior court approval.

5 | POWER OF ATTORNEY VS GUARDIANSHIP





5 | POWER OF ATTORNEY VS GUARDIANSHIP

Power of Attorney

- **Private:** you are in control and may make your decisions privately
- **Customizable:** you decide who is in control
- **Flexible:** you have the ability to customize and make changes
- **Freedom:** you do not have to ask permission to make decisions on your own behalf

Guardianship

- **Public:** guardianships can be public record that anyone can view
- **Uncertain:** the court is in charge and will decide who is in control
- **Supervision:** the Guardian is supervised by the court, which can provide safeguards for the protected person's assets
- **Restrictive:** the court can limit the Guardian's ability to make purchases and decisions



6 | GUARDIANSHIP ALTERNATIVES



6 | GUARDIANSHIP ALTERNATIVES

While guardianship serves a purpose in safeguarding vulnerable individuals, it can sometimes lead to unintended consequences, potentially diminishing the individual's autonomy and independence.

Supported Decision Making (SDM) is an innovative and person-centered alternative seeking to strike a balance between providing essential support and preserving the individual's right to self-determination.

SDM is based on decades of research showing that people with disabilities who have more control over their lives and make more decisions have a better quality of life.

This less restrictive alternative challenges the notion of decision-making solely resting in the hands of a guardian, aiming instead to create a supportive network that encourages individuals to play an integral role in determining their path forward.

In conclusion...

At **Dillman & Owen Estate and Elder Law**, we acknowledge that you want the best for your parents, but this can be a challenging responsibility to consider. We will help you evaluate your options to ensure your loved one benefits from appropriate guardianship. Our holistic services and experience have enabled us to help hundreds of like-minded adult children help their parents secure guardianship.

Our experienced Guardianship attorneys will help you choose the right guardian to act on your behalf if you become incapacitated. If you are an adult child, we will offer the legal support you need to secure guardianship for your parents when the need arises.



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