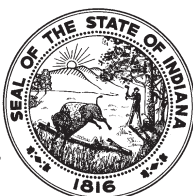


# Adult Guardianship

## WHAT YOU NEED TO KNOW

Guardianships are a useful legal tool to help people who lack the capacity to make decisions for themselves – such as those suffering from dementia or developmental disability. In a guardianship proceeding the court appoints a guardian to manage an incapacitated person’s financial assets or personal affairs. The incapacitated person is then known as the “protected person.” A guardian can help ensure that the protected person lives with security and dignity to the greatest extent possible given their circumstances.

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### Alternatives to Guardianship

There are alternatives to guardianship, such as **Power of Attorney** or **Health Care Representative** documents. However, those instruments must be created while a person still has the capacity to understand and sign a legal document. Once a person has already become incapacitated, a guardianship may be the only solution.

### Common Situations of Incapacity Requiring Guardianship

- Alzheimer’s disease or dementia
- Cognitive deficits associated with aging
- Developmental disabilities
- Traumatic Brain Injury
- Stroke or sudden health crisis affecting cognitive functioning

### The Legal Process for Creating a Guardianship

- The right to choose and make decisions for oneself is a basic human right. Therefore, the law provides a formal process to ensure that the need for protection and safety are balanced with a respect for an individual’s right to independence and self-determination.
- Any interested person may file a **Petition for Guardianship**.
- Get legal advice from an attorney experienced with guardianship law.
- Get a physician’s statement describing the alleged incapacitated person’s diagnoses, functional limitations, and areas where he or she may need a guardian’s help.
- Provide notice to the alleged incapacitated person, his or her spouse, adult children or anyone else entitled to notice under the law.
- The person alleged to be incapacitated must be present at a court hearing unless it is impossible or impracticable due to their disappearance or absence; if it is not in their best interest because of a threat to their health or safety; or if they have knowingly and voluntarily consented to the appointment of a guardian.
- After a hearing, if the court finds the named person is an incapacitated person, and that the appointment of a guardian is necessary to provide care and supervision for their physical person or property, then the court will appoint a guardian.
- When a guardian is appointed the Clerk of the Court will issue “**Letters of Guardianship**.” This document is used to show banks, hospitals and other agencies that the named guardian has been appointed to make decisions and act on behalf of the incapacitated person.

### Temporary Guardianship

The court may create a temporary guardianship not to exceed 90 days in an emergency situation. To show an emergency the petitioner must prove that the welfare of the incapacitated person requires immediate action, and that no other person appears to have authority to act.

## Who Should Be Guardian?

- The Guardian may be a family member such as a spouse or an adult child. However, they should be someone able and willing to act in the best interests of the incapacitated person, and suitable to take on this responsibility and position of trust.
- A Guardian must be 18 years of age or older, be of sound mind, have no felony convictions, and be capable of developing a guardianship plan suitable to the court.
- The Court may take into account any requests previously made by the alleged incapacitated person – such as language nominating a guardian contained in a power of attorney document.

## Types of Guardianship

- **Guardianship of the Person** – Guardian has the ability to make decisions about the person's medical care, education, and other aspects of their personal life, such as where they should live.
- **Guardianship of the Estate** – Guardian has the ability to manage the protected person's finances and other assets.
- **Plenary Guardianship** – Guardian has the power to manage both the person and the estate.

## Duties and Responsibilities of the Guardian

- A Guardian must be sufficiently acquainted with the protected person and maintain sufficient contacts to understand that person's capabilities, disabilities, limitations, needs, opportunities, and physical and mental health.
- The Guardian of the Person may choose the residence of the protected person – such as a nursing home, group home, or other residential facility if the circumstances warrant. They must encourage the protected person's self-reliance and independence, and also consider recommendations from relevant professionals concerning appropriate standards of care.
- When making medical decisions the Guardian must exercise "informed consent" on behalf of the protected person. This includes gathering all the necessary information about a proposed medical treatment; asking questions to understand the proposed treatment and alternatives; weighing those options in light of the protected person's circumstances; and making an informed decision.
- The Guardian of the Estate should set up a separate bank account for the protected person and keep track of all money coming in and out of this account. All bona fide bills associated with the protected person should be paid from this account – such as food, clothing, taxes, utilities, insurance premiums, and day-to-day living expenses.

- Guardians must never mix the protected person's money with their own funds, and must not engage in any self-dealing where there is a conflict of interest. The court may require the guardian to post a bond to guarantee that the protected person's money will be handled responsibly and only for the benefit of the protected person.
- An initial inventory must be filed with the court showing the value of all property and valuable assets belonging to the protected person. Then the guardian must file regular financial accountings as required by law detailing how the protected person's money has been spent.
- For complex financial matters, a guardian is always best advised to seek professional help from an attorney, accountant, financial planner, or other needed professional.
- Upon seeking timely court approval, a guardian is entitled to reasonable compensation for services and reimbursement for reasonable expenditures made in good faith on behalf of the protected person.

## Ending a Guardianship

Any person, including the protected person, can ask the court to terminate a guardianship. Guardianships may be terminated if the protected person is no longer incapacitated, dies, moves to another state, or if a new guardian is appointed.

## Local Resources

**The Monroe County Volunteer Guardianship Program** recruits and trains volunteers to serve as court-appointed guardians for eligible incapacitated adults in Monroe County. For more information contact the Area 10 Agency on Aging at [www.area10agency.org](http://www.area10agency.org) or call (812) 876-3383 or 1-800-844-1010.

**Adult Protective Services** investigates reports of endangered adults and may take legal action to protect elderly or disabled adult victims. Visit [www.monroeprosecutor.in.us](http://www.monroeprosecutor.in.us) for more information. To make a confidential report of an endangered adult contact 1-800-992-6978 or locally call Unit 10 (Monroe, Owen, Morgan counties) at (812) 349-2665.

**Indiana Legal Services** is a non-profit law firm that provides free civil legal assistance to eligible low-income people, or those age 60 and older. Visit [www.indianalegalservices.org](http://www.indianalegalservices.org) or call (812) 339-7668 or 1-800-822-4774.

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