



Benefits of a Guardianship

By Margaret Spaziani, Esq.

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Often, relatives of a young adult that has serious developmental disabilities, autism or traumatic brain injury and reaches the age of legal adulthood and relatives of elderly adults, find themselves without the legal authority to help their loved ones

Guardianship is needed so the Court can appoint someone to act as the surrogate decision-maker for an incapacitated person. The Guardian of the Person makes decisions concerning place of residence, choice of physicians, treatment and healthcare choices, and other personal issues. The Guardian of the Property or Estate controls the decision about income, assets, legal actions, insurance claims, property, and the like. Without a guardianship in place, relatives have no authority to make decisions and fully communicate with physicians, health care residences, and financial institutions on behalf of their loved ones.

The guardianship process involves filing a petition with the Court and holding a hearing to establish the incapacity and need for a guardian. Initially, the Court must make a determination that an incapacity exists. Reaching that determination will require medical reports from two independent physicians. A petitioner must prove to the Court's satisfaction that the individual is incapacitated and that there is a need for a guardian. Once the Court signs the Order appointing a guardian and declaring a person incapacitated, the Guardian has authority to communicate with medical professionals and financial institutions.

If your loved one is living in a residential setting it is very important for guardians to maintain contact with the caretakers and always take a proactive initiative. Do not assume you will always be informed unless you are known to his/her caretaking community.

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If your loved one is residing with you, it is still important to keep an open dialogue with caretakers, social workers and other therapists and now that you have been appointed as guardian this is possible. Because you have a guardianship, you can make decisions regarding medications and therapy. Guardians should be vigilant and thoughtful.

If you are the guardian of your adult disabled child you should also name someone to step in for you in the event of your death to ensure that your adult disabled child's care is continued. This condition lasts their lifetime and yours so it is important to have a plan of succession in place.

If you have been avoiding a guardianship and your disabled child is already an adult, get a guardianship going now and save yourself years of worry and emergency calls and the stress that it puts on you and your family.



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