

## How Do I Get a Guardianship

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The purpose of this article is to discuss the general process for being appointed the guardian of a loved one or other family member. The process can be simple or complicated depending upon a multitude of factors. This article will discuss the general process; whereas future articles will explore issues that can arise which may render the process more complicated. It is important, however, to understand the general process of obtaining a guardianship before more complex issues can be explored.

The first assumption that we must make is that there is a loved one or family member who appears unable to manage their own affairs. This lack of capacity could be due to age, disease, accident, or other cause which has affected their mental capacity to care for themselves. Once we are presented with this situation, there are a few steps we must take should we wish to be appointed guardian for this person. Should there be a power of attorney already in place, that instrument can be utilized to provide care and assistance to this individual, however, being appointed guardian for a person often provides greater flexibility to easily manage their affairs. This article will not explore the differences between a guardianship and a power of attorney.

Once we have determined that this individual needs assistance with regard to their health, maintenance, and/or finances, the next step would be to organize what is necessary to file a petition for guardianship. The first thing that must be completed in any guardianship proceeding is to obtain evaluations concerning the mental capacity of the subject individual from two physicians who will conduct competency evaluations to determine whether the person is suffering from issues concerning their mental competency. Should the evaluations reveal issues with the competency of this individual which impede their ability to care for themselves, the process will move to the next step.

After the evaluations are completed, a complaint must be filed within the County Court in which the alleged incapacitated individual resides seeking to have a guardian appointed for this person. This process is fairly complicated, and thus, it is suggested that you use an attorney to assist you in this regard. As part of filing the complaint, you must serve any and all potentially interested parties. Such interested parties might be the spouse of the alleged incapacitated person, family members, other relatives related to the individual, or any other individual who may possess a power of attorney or other such relationship to the alleged incapacitated person. In the petition, you will name the individual who you propose to be guardian for the alleged incapacitated person. After the complaint has been filed and served, the court will take action to move to the next step.

In the next step, the court will appoint an attorney for the alleged incapacitated person to represent their interests in this proceeding. The court will then set a hearing date in the future and will require you to provide notice to the same aforementioned interested parties of said hearing date. At the hearing date, these individuals will have an opportunity to object the guardianship application, or to object to the appointment of a particular individual to serve as the guardian. The purpose of the hearing will be to determine whether a guardian is appropriate, what level of guardian should be appointed, and who will serve as guardian for the alleged incapacitated person. This is a simplified explanation of what may occur, as more complex issues can arise during this part of the process.

Should the court appoint a guardian, this individual will have to meet certain conditions to serve as the guardian for this individual. Once these conditions are satisfied and the order of appointment is complete, this individual will now be able to manage the alleged incapacitated person's affairs as though they were the individual themselves. This gives greater control and flexibility to the guardian than a power of attorney, and also provides for potential of court oversight if necessary. As stated above, this is simply an outline as to general process to obtain a guardianship, which can become exponentially more complicated should disputes arise, and therefore it is always suggested that if you should be interested in obtaining a guardianship that you consult with competent counsel.

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