Guardianship Made Simple:
A Beginner's Guide

Produced by the **Maryland Developmental Disabilities Council**
in partnership with the authors of
"Guardianship and Its Alternatives: A Handbook on Maryland Law"

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About This Guide

Guardianship Made Simple provides a quick, easy way to understand basic information about adult guardianship in Maryland. It draws information from an expert source – the Guardianship and Its Alternatives: A Handbook on Maryland Law written by the University of Maryland Francis King Carey School of Law. The Maryland Developmental Disabilities Council developed this brief guide in partnership with the handbook authors.

If you want to learn what you can do when an adult you care about cannot make important decisions for themselves – this guide is for you! Start here and then check out the handbook for much more information and guidance. Take things a step at a time, get the help you need, and it will not feel overwhelming.

We answer these questions:

- What is guardianship?
- Why would someone need a guardian?
- What are different types of guardianship?
- How does a court decide if guardianship is needed?
- How does guardianship affect the person?
- Are there alternatives to guardianship?
- Where can I get help?

Let's jump in.

What is adult guardianship?

Guardianship is when a court chooses someone to make important decisions for an adult who cannot make decisions on their own. This happens after a family member, friend, or another concerned person asks the court to do so. The person the court picks is called the **guardian**.

Why would someone need a guardian?

A person may need a guardian if they cannot make everyday decisions because of a disability or health condition.

What are the different types of guardianship?

The court can choose someone to act as guardian of the person, guardian of the property, or both.

- **A guardian of the person** makes decisions about the person's medical care, housing, food, clothing, and other personal needs.
- **A guardian of the property** makes decisions about the person's money, property, and other money-related issues.

One person can be both guardian of the person and guardian of the property, or different people can take each role.

In emergencies, or when there is no family member or friend to help, the court may choose a **public guardian**. That could be a government worker or government agency, like the Maryland Department of Aging or local Department of Social Services. They also step in if there is no money to hire a private guardian.

→ ***Learn more:*** *Chapters 1, 4, 5, and 6 in the handbook explain who can be a guardian, how someone becomes a guardian, what their responsibilities are, whether they can be paid, and when guardianship ends.*

How does a court decide if guardianship is needed?

Every adult has the right to make decisions about their lives, even if those decisions are not always the best. But a person must be able to understand the consequences of their decisions. Some people with mental illness or cognitive disabilities may not always be able to do this.

Mental illness includes conditions like schizophrenia and bipolar disorder. Cognitive disabilities include conditions like intellectual disability and dementia. Having a mental illness or cognitive disability does not automatically mean a person needs a guardian. When considering guardianship, the court looks at what kinds of decisions the person can and cannot make.

→ ***Learn more:*** *Chapter 2 in the handbook explains the law, how people are evaluated, and how the court decides if guardianship is needed. It also provides advice to lawyers and doctors.*

How does guardianship affect the person?

Having a guardian can greatly change a person's life. An adult may lose the right to make decisions about their daily life because a guardian is now making those decisions for them. This limits personal freedom.

In general, the law says a guardian should only be put in place when there is no simpler or less limiting option that would still protect the person. Sometimes guardianship is truly needed to protect a person from harm or to manage their money and property. Before asking the court for a guardian, you should consider all other possible solutions.

→ ***Learn more:*** *Chapter 1 in the handbook discusses the rights of a person who has a guardian.*

Are there alternatives to guardianship?

Yes! In fact, most people do not need a guardian. Always consider other ways to support a person with a disability or health condition before turning to guardianship. Here are some examples:

- Getting help with day-to-day needs, like in-home aide services, day programs, meal and transportation services, and case management.
- Using supportive housing services for people with disabilities and seniors.
- Managing money or property by naming a representative payee for Social Security and other benefits, or setting up a special needs trust.
- Naming someone to make healthcare decisions using an advance directive.
- Setting up a power of attorney to take on certain responsibilities for the person.
- Using supported decision-making to help the person stay in control of their life as much as possible.

→ ***Learn more:*** *Chapter 3 in the handbook explains more about how advance directives and surrogate decision-makers work, and what is required.*

Let's look more closely at advance directives, power of attorney, and supported decision-making.

Advance directives

An advance directive is a written or spoken statement a person makes about the health or mental health care they want in the future, when they cannot make decisions for themselves.

The advance directive may:

- Name someone to make health/mental health care decisions for you,
- State what type of care you want in different situations, or
- Do both.

If a person does not have an advance directive and cannot make their own health care decisions, Maryland law allows certain people to step in and make those decisions. They are called a **surrogate decision maker**. The law says who can serve as a surrogate decision maker – mainly family members and close friends.

Surrogates are most often used in emergency medical situations. They must make decisions based on what you would want.

→ ***Learn more:*** *Chapter 3 in the handbook explains more about how advance directives and surrogate decision-makers work, and what is required.*

Power of attorney

A guardian of the property may not be needed if the person has a durable power of attorney. This is a written document that lets another person, called an agent, manage your money and property. "Durable" means the agent can keep doing this even if you later cannot make decisions for yourself.

A person must sign a power of attorney while they can understand what it means. For some people, it may be too late to do this. Others – like people with intellectual disability or people in the early stages of Alzheimer's – may still be able to do so. The person must understand the consequences of naming an agent, and be able to clearly communicate their wishes.

→ ***Learn more:*** *Chapter 3 in the handbook provides more information.*

Supported decision-making

Supported decision-making is a way for adults to get help making decisions from people they trust. It is another tool to consider before – or along with – guardianship. Most importantly, supported decision-making helps people keep their rights and have more control over their own lives.

Supported decision-making is a formal process recognized in Maryland law. When using supported decision-making, an adult chooses one or more "supporters" to help them make decisions. A supporter can be a family member, friend, staff, or professional. With supported decision-making, a person may not need a guardian.

→ ***Learn more:*** *Chapter 7 in the handbook explains the law related to supported decision-making, explains the process in more detail, and describes the supporter's responsibilities. Also check out:*

- *National Resource Center for Supported Decision-Making: supporteddecisionmaking.org*
- *Center for Public Representation: supporteddecisions.org*

Where can I get help?

There are statewide and county agencies that can provide information, guidance, and support about guardianship and its alternatives.

→ ***Learn more:*** *Chapter 8 in the handbook includes contact information.*

Key Takeaways

- Guardianship lets someone make decisions for an adult who cannot make decisions for themselves.
- Sometimes guardianship is needed, but it should be used only when no simpler option that helps the person keep control over their life will work.
- Alternatives to guardianship help people keep more control over their lives. That should always be the goal!
- Help is available – plan ahead!

Now that you know the basics of guardianship, take a look at **Guardianship and Its Alternatives: A Handbook on Maryland Law**.

Click the link above, use the QR code to the right, or go to: https://tinyurl.com/guardianshiphandbook

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