

Law Office Of Inna Fershteyn

Guardianship



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What is Guardianship?

Guardianship grants an individual legal authority over a loved one's health care/financial decisions and property management if they are mentally or physically incompetent.

Note: This person must be categorized as an incapacitated person (IP). With almost twenty years of experience as a New York Guardianship Attorney, the Law Office of Inna Fershteyn, P.C. will help you if you are in need of legal assistance with your guardianship case or in need of representation.



What is Child Guardianship?

In some instances, children under the age of 18 may be required to live with a legal guardian that is not their parent. Anybody who assumes legal guardianship of a minor has the responsibility of a legal parent. They must provide the child with essential needs such as food, housing, clothing, education, and medical care.

Guardianship does not negate the legal relationship that exists between a child and their biological parents; rather, it co-exists with the relationship between a child and their biological parents.

In some cases, there are situations in which a child has certain medical needs or financial assets. As a result, the child's parent may obtain guardianship over the child or the child's estate. They will manage the child's finances and are responsible for keeping the fund safe and available until the child turns 18.

Guardianships are subject to termination according to the terms set in the guardianship agreement. In many instances,, an expiry date is not set. Generally though, guardianships last until one of the following:

- the guardian declares resignation
- the child turns 18
- the child or guardian passes away
- the child's assets have been depleted
- A judge deems that guardianship is no longer necessary, or
- A judge determines that the guardianship no longer serves the child's best interests

What is Adult Guardianship?

Adult Guardianship is a legal procedure during which a court decides that an individual is not able to make sensible decisions due to severe disabilities. Therefore, the individual is in need of an additional person to make these decisions. The person may be unable to competently make decisions about medical treatments or obtain livable circumstances including appropriate food and shelter. This condition is known as a “disability.” If the court has evidence that a disability is hindering a person’s ability to make decisions, it will appoint someone on behalf of the disabled person. This appointee will be responsible for making decisions on behalf of the disabled individual.



Differentiating Between Guardianship and Conservatorship

Similar to guardianship, conservatorship is a legal process through which an individual is court appointed to manage the affairs of an incapacitated person. However, guardians and conservators tend to have different responsibilities. While guardians are mostly responsible for medical, personal, and health-related needs, conservators mostly assist with managing property and financial needs and decisions. This generally includes paying bills, collecting debts, and handling the incapacitated person's bank accounts, investments, and cash flow of assets.



The Different Types of Guardianship in New York

Guardian of Property: In addition to obtaining guardianship of an individual, it is possible to obtain guardianship of a property. In this scenario, the guardian has the power to manage a child's property until they become of legal age. A child's property may consist of money that was left to their name. Most times, the guardian who is chosen to manage the child's property is also appointed as the child's guardian.

Guardian ad Litem (GAL): During this process, a judge appoints an individual to represent a person that is incapable of being present. This guardian is responsible for protecting the rights and interests of that person during a single court case. A GAL can be appointed in cases involving mostly children or incapacitated individuals. GALs are only responsible for helping a person resolve their court case.



The Process of Obtaining Guardianship

There are several steps that need to be taken when appointing a legal guardian:

Step 1: obtain a letter or report certifying the legal disability of the ward; the objective here is to explain the need for a guardian.

Step 2: After this letter is obtained, you must file a petition with the court. Summons are served to the ward, or a person that is under the protection of a guardian.

Step 3: A hearing is held where evidence is presented to show that the ward is either disabled or is improperly being taken care of if they are a minor. An attorney is usually present. The evidence must prove that guardianship is necessary. The hearing also decides the entity that will act as a guardian as well as what the authority of the guardian will be. This process can take between two weeks to two months to complete.

Although this process can be lengthy, New York has policies allowing a guardian to be appointed in extenuating circumstances. In these cases, the appointment is made after a hearing about the issue at hand as well as the nature of the guardian's role, which for the most part only takes a few days. A guardianship can last forever unless modified, revoked or terminated. The court is allowed to do this if evidence is presented confirming the ward's competence and ability to make decisions.

Frequently Asked Questions

What happens at a guardianship hearing?

At a guardianship hearing, the judge will ask the “guardian to be” different questions that the judge might have. Anyone who is challenging a guardianship will also be allowed to voice the reasons they are challenging the guardianship. After the judge has acquired all perspectives, they may decide immediately whether to allow or deny the guardianship.

How does a legal guardianship differ from an adoption?

A guardianship is simply a legal relationship between a child and an adult who is not the biological parent of the child. It allows the guardian of the child to legally take care of the child as well as make decisions regarding the child’s life. An adoption on the other hand, is permanent. In an adoption, the rights and obligations of the biological parents are cancelled, and the adoptive parents substitute their place.

How do I obtain legal guardianship of a child without going to court?

A person may obtain legal guardianship of a child without going to court by becoming a standby guardian. The biological parents must sign a document that is available in probate court, which states that they consent to a relative to take guardianship of the child.

How do I challenge a guardianship?

If someone has a history of violent behavior, alcohol abuse or drug abuse, then it would be difficult for them to obtain guardianship. You may also challenge guardianship eligibility on the basis that the guardian is incapable of managing the child or the child’s estate.

Hire An Attorney

Law Office of Inna Fershteyn and Associates, P.C. understands the guardianship process and has worked with many clients. The best lawyers in New York will work diligently to ensure that individual concerns are carefully addressed and goals are met. With our extensive knowledge, we will work with you to answer any guardianship questions and offer knowledgeable guidance that will give you peace of mind as well as secure your family's future. For guardianship planning help, contact us today! Call (718) 333-2394 to set up a consultation or **contact us**.



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