

Arc Guide to Guardianship

When a person turns 18 years old, they become a legal adult. Adults have full rights and responsibilities unless guardianship is established. Solely having a disability does not mean a person needs a guardian.

Guardianship is a legal process that takes away certain decision-making rights and is therefore considered a ‘substitute decision making process’ . It exists to help adults who are not able to make decisions about their own life. The Arc Greater Twin Cities believes less restrictive options should always be considered first before thinking about guardianship.

Alternative Options to Guardianship

All people, with or without disabilities, have a variety of formal and informal supports we turn to when we need help making decisions. When people have the ability to make choices about their life, they feel more power and control. Each person has their own unique set of strengths and abilities that should be recognized and considered when thinking about how to best support a person. Making decisions can also be about taking risks, making mistakes and learning from them.

Some alternatives to consider might include:

Circle of Support

We all have people we turn to when making decisions in our life. Our Circle of Support are people we can reach out to in times of need. They include family, friends, doctors, support professionals, teachers, and so on.

Supported Decision Making Agreement

A Supported Decision Making Agreement is a document that lists what decisions a person wants help making. It names people one can trust within their network. While this Agreement is a casual contract and not legally binding, it is a way to have a discussion about what kind of help a person wants or needs.

Health Care Directive

Health Care Directives encourage people to have an in depth conversation about what they would like their health care to look like in a situation where they cannot make their own decisions. Everyone, regardless of guardianship, should have a conversation about their desires for health care decisions.

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Joint Bank Account

A joint bank account can be a way for a person to still get support with managing their money after they are 18.

Power of Attorney (PoA)

A PoA can be made specifically to assist people with disabilities in appointing someone to help them make certain types of decisions. A PoA can cover general decisions, financial decisions and/or health care decisions. This agreement can be created or ended at any time. To use a Power of Attorney in helping a person make decisions, The Arc Greater Twin Cities suggests you work with an attorney.

Representative (Rep) Payee

When a person is receiving Social Security benefits, they can receive help in managing this money through a designated Rep Payee. This person manages the account where the Social Security money is deposited, receives the benefits on behalf of the person and completes annual reporting to the Social Security Administration.

Supplemental/Special Needs Trust

A future planning tool, a trust is a way for a person to have a large amount of money in their name, managed by a trustee, without it affecting their eligibility for government benefits, like Medical Assistance (MA) or Supplemental Security Income (SSI).

ABLE Account

This is an account that encourages and allows people with disabilities to save more of their own money. An ABLE Account can hold up to \$14,000 a year (\$100,000 over a lifetime) without it affecting a person's Social Security or Medical Assistance benefits.

Guardianship Powers

There are 7 powers of guardianship. Each power is determined individually through a discussion with one's family and is finalized in a court process. A limited guardianship is when a guardian only has a select few powers that are necessary to support the person. With limited guardianship, all decisions in the other areas are the individual's choice. One can still be supported in making decisions through additional the alternatives to guardianship listed above.

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The legal powers of guardianship include:

1. Determining place of abode (where the person lives)
2. Care, comfort and maintenance (needs for shelter, nutrition and access to service - including academic and vocational services)
3. Reasonable care for personal effects (clothing and furniture)
4. Medical or other professional care
5. Approval or withholding of contracts
6. Supervisory authority
7. Accessing government benefits

Frequently Asked Questions

What does the term ‘ward ’mean?

People under guardianship are referred to as “wards” or “protected persons” in the court system. Depending on which powers are granted, guardians make legal decisions on behalf of the ward.

What are a person’s rights under guardianship?

Regardless of the level of guardianship, people with disabilities have civil and constitutional rights. These rights can be found in the Bill of Rights. It includes everything from the right to be treated with dignity and respect, to the right to privacy, to the right to get married and have children. All people under guardianship should have the right to make decisions about their life and have choice whenever possible. Guardians are expected to engage ‘wards’ in decision making to ensure that their preferences and desires are known, considered, and achieved.

How can I individualize guardianship?

Alternatives to guardianship are a great way to support a person and encourage their own self-determination. If someone needs assistance in decision making that cannot be covered through alternatives, consider a limited guardianship. One can pick and choose only the powers of guardianship that are needed. Additional alternatives to guardianship can be paired with the selected powers to ensure a person has all the support they need in decision making.

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Do I need an attorney?

The Arc Greater Twin Cities recommends that families utilize an attorney to assist them through the process. Guardianship and other ‘Special Needs Law’ is very intricate and specific. It is vital to work with a professional who is well-versed in the process and laws. Contact The Arc Greater Twin Cities to receive a list of attorneys in the Twin Cities metro area.

What is the cost of guardianship?

If the person with the disability (regardless of parental income) is not able to pay the fees and costs for establishing the guardianship, the family and their attorney may proceed with In Forma Pauperis (IFP). IFP will waive the court fees and pay attorney fees. The rules for In Forma Pauperis vary by county of residence. Most counties will not approve a petition if the family has a funded Supplemental or Special Needs Trust for the benefit of the person with the disability. Not all attorneys agree to represent In Forma Pauperis.

What yearly paperwork needs to be submitted?

Guardians must provide an Annual Report of Well-Being to the county district court where the guardianship is established. This is very important. Guardians are not reminded to send this in. Mark your calendar to complete this form every year. You can find this form at <http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>

Resources

- View our Guardianship Webinar on [The Arc Minnesota YouTube](#) page.
- Watch the Guardianship/Conservatorship video created by Hennepin County at <http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>
- Attend an Arc training on guardianship to learn more about how a person can best utilize supported decision-making and alternatives to guardianship.
- Reference Texas’ legally binding [Supported Decision Making Agreement](#) as a template.
- Learn about rights people have under guardianship by reading the [MN Bill of Rights for Wards and Protected persons. STATUTE: Minn. Statute Section 524.5-120](#)

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- Information and forms on Health Care Directives can be found at www.honoringchoices.org.

Call The Arc Minnesota with any questions at 952-920-0855.

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