



# DEPARTMENT OF HUMAN SERVICES BUREAU OF GUARDIANSHIP SERVICES

## Frequently Asked Questions

### **Q. What is a guardian?**

A. A guardian is a person or agency appointed by a court to act on behalf of an individual to assure provision for the health, safety and welfare of the individual and to protect his or her rights in accordance with the judgment of guardianship.

### **Q. What does guardianship mean?**

A. Guardianship is the court appointment of a person or an agency to make personal decisions for an individual who is not capable of making decisions independently.

It is important to understand that guardianship removes an individual's fundamental right of self-determination. Therefore, it should only be a solution of last resort.

### **Q. Do I have decision-making authority on behalf of my son or daughter when he or she turns 18 years old?**

A. No. Eighteen is the legal age of majority, and at that point, without an action by a court of law, parents' legal decision-making authority for their children ends. However, parents can continue to be involved in planning for their son or daughter. So, you may continue to attend planning meetings such as the IEP or IHP. You may still be involved in medical decisions, and you may be asked to give consent in a medical emergency as the next of kin.

**Q. Does everyone with a developmental disability need a guardian when they turn 18?**

A. No. This is a very individual question and would depend on individual circumstances. If your son or daughter still lives at home with you and has no serious chronic medical issues that involve frequent hospitalizations, there is no immediate need to pursue guardianship. However, if your son or daughter has legal issues that require an advocate to make sure he or she is represented, a guardian may be needed.

**Q. Is there more than one type of guardianship?**

A. Yes, there are two types of guardianship: guardianship of the person and guardianship of property. A guardian can be appointed guardian of the person, guardian of the property or guardian of the person and property. It is generally not necessary to be guardian of the property unless the individual has assets in his or her name.

The Bureau of Guardianship Services, which is located at the Department of Human Services, only assists individuals and families with guardianship of the person. If a family believes it needs to pursue guardianship of the property because a large amount of money or property is involved, they will need to seek advice from a private attorney.

In addition, guardianship of the person can be either General or Limited.

- General Guardianship is appropriate for people who have been found incapable of making or expressing any decisions. This is sometimes referred to as 'plenary' guardianship.
- Limited Guardianship is appropriate for people who have been found capable of making and expressing some, but not all, decisions. The law identifies six areas for Limited Guardianship: residential, educational, medical, legal, vocational and financial. Of the six areas, BGS does not pursue a limited guardianship of the person for financial matters.

**Q. Are there alternatives to guardianship?**

A. Yes. In New Jersey, an individual may appoint a Power of Attorney (POA) to make decisions on his or her behalf.

In order to appoint a POA, the individual with the disability must be able to understand on a basic level that he or she is appointing someone to make decisions on his or her behalf. In addition:

- A person must be able to give consent
- A POA can cover person and/or property
- A POA can be revoked and/or changed at any time, based on changing needs
- A POA is significantly less costly than guardianship
- It is best to work through an attorney to establish POA

For additional information about this option, please visit the website of the Guardianship Association of New Jersey (GANJI ) at <http://www.ganji.org>;

**Q. If I want to pursue guardianship for my family member, how do I begin?**

All guardianship appointments require a Judgment rendered by a Superior Court judge. Families can pursue guardianship in three different ways: by representing themselves (*pro se*); through an attorney; or with the assistance of the Bureau of Guardianship Services (BGS) at the Department of Human Services.

**Families can pursue guardianship *pro se*.** This is a great choice for families who can complete the process on their own, especially if the individual is not already under DDD Services.

1. Pro se means “without a petitioning attorney.” The proposed guardian represents himself or herself in court.
2. The forms and instructions can be found at [www.judiciary.state.nj.us](http://www.judiciary.state.nj.us) or by clicking here: <http://www.judiciary.state.nj.us/prose/10558.pdf>.
  - a. Click on “Represent myself in court.
  - b. Click on “How to file for guardianship of a developmentally disabled person.”
  - c. This process eliminates the cost to hire an attorney to file the petition.
3. Remaining costs include court fees, guardianship assessments by a psychologist or physician, and the required court-appointed attorney to represent the individual.

**Families can hire an attorney**, at their own expense, to complete the entire process.

1. A relative or other interested party may choose to pursue appointment as guardian privately, at his or her own expense.
2. This is the only option if guardianship is to be of person and property.

**Families can request BGS** to process a guardianship petition.

1. There are approximately 4000 requests currently pending.
2. This process is for guardianship of the person only.
3. BGS is only able to assist individuals who receive services funded by the Division of Developmental Disabilities. Individuals must apply to DDD to receive an eligibility determination.

**Q. How will a judge know about my child's ability to make decisions?**

A. All applications for guardianship require an up-to-date assessment from a psychologist, psychiatrist or medical doctor licensed in the State of New Jersey. The purpose of this assessment is to verify the need for a guardian and if so, whether General or Limited guardianship is required. Under general guardianship, the guardian makes decisions and gives consents related to all areas of a person's life. Limited guardianship applies only to certain areas specified by the court; these areas could include residential, vocational, legal, medical and educational. Additionally, financial decision making will be assessed if seeking guardianship of property.

**Q. Who can be a guardian?**

A. The guardian can be a family member, another interested person, or the Bureau of Guardianship Services, Department of Human Services.

**Q. Can more than one person be appointed as guardian?**

A. Yes. When more than one person is appointed as a guardian, it is called co-guardianship. Co-guardians:

- have equal decision-making authority
- must be involved together in all decisions or consents needed for the individual
- should be limited to a reasonable number, generally three or less, to make sure decisions can be made on a timely basis
- must, like any single guardian, be appointed by the Superior Court, which is also the only entity that can modify or change the guardianship order.

**Q. After a guardian or co-guardians have been appointed, can additional guardians be added later?**

A. Yes. However, adding additional guardians requires going back to the court and requesting the change. In order to do this, the guardian or family would need to seek advice from an attorney. Given limited resources, the Bureau of Guardianship Services cannot process this type of request.

**Q. If a guardian is appointed, can a successor guardian be named in the guardian's will?**

A. Yes. However, this is not automatic just because it is in the will. Once the guardian dies, the request for appointment of a successor guardian must still be processed through the court.

**Q. What happens if the person named in the will does not want to serve as guardian?**

A. If the person named in the guardian's will does not want to succeed in that role, it will be necessary to find another person or agency that is willing to act as guardian. For this reason, it is important for guardians to be sure individuals named in their wills to be successor guardians continue to be willing to assume that role.

**Q. What happens if an appointed guardian passes away or is otherwise unable to continue as guardian?**

A. At that point, a substitute or successor guardian must be sought. This request will have to be petitioned through the court. If the Bureau of Guardianship Services pursues this option, an assessment for a continued need for a guardian will be completed. The next of kin will be asked if he or she wishes to become substitute guardian.

**Q. How long does it take to complete the guardianship process through the Bureau of Guardianship Services?**

A. BGS maintains a waiting list of individuals who have requested assistance with guardianship. Currently, there are approximately 4,000 individuals on that list. The actual waiting list time is unavailable, but it is safe to say that it can be measured in years. Once an individual is reached and BGS begins working with him or her, the process takes approximately 8-12 months to complete. This includes receipt of the court Judgment.

**Q. What is the process for pursuing guardianship?**

1. Identify a proposed guardian or co-guardians
2. Complete a psychological evaluation
3. Receive a court recommendation
4. File paperwork with the court
5. Conduct a hearing (if necessary)
6. Obtain a court judgment

**Q. If I pursue guardianship privately, can I receive any assistance from the Division of Developmental Disabilities?**

- Individuals who reside in a residential setting funded by DDD are required to contribute financially to the cost of their care; this is known as "Contribution to Care." When the family of such an individual pursues guardianship, the amount of the individual's Contribution to Care may be

reduced by up to \$2,000, on a one-time basis, and applied to costs associated with pursuing a guardianship application with the court.