

GUARDIANSHIP

Guardianship is a legal relationship in which one person is authorized to make decisions on behalf of another person. The Court determines a person's abilities and incapacities and considers the person's need for appointment of a Guardian.

CONSIDERING GUARDIANSHIP

At age 18, each person is presumed to have capacity and ability to assume the legal responsibilities of self-determination. For adults who may be incapable of making decisions in their own best interests, a petitioner may seek to have the vulnerable person declared incapacitated in a court of law. The Court appoints a Guardian (limited or general) if the person is judged to be incapacitated.

GUARDIANSHIP STATUTES

N.J.S. 3B:12-19 et seq. applies to all persons who may need limited or general guardianship and may involve guardianship of the person and/or property.

N.J.S. 30:4-165 applies to persons who have been determined eligible for services from the NJ Division of Developmental Disabilities and may be in need of a limited or general guardianship for person and/or property.

PROTECTIVE SERVICES AND VULNERABLE ADULTS (NJ DEPARTMENT OF HEALTH AND SENIOR SERVICES, ADULT PROTECTIVE SERVICES-APS)

N.J.S. 52:27d-407 applies to persons who are vulnerable to exploitation or self-neglect. Social workers will make an assessment and may recommend an examination by a health professional to determine a need for guardianship.

OTHER GUARDIANSHIP MATTERS

Consult an attorney about co-guardians, substitute guardians, reversal of guardianship. To protect benefits, contact an attorney and a licensed financial advisor or CPA about a Special Needs Trust. To assist with the legal costs of obtaining Guardianship, contact the Division of Disability Services about the Traumatic Brain Injury Fund or the Division of Developmental Disabilities about the stipend program.



GANJI BRAIN INJURY ASSOCIATION OF NEW JERSEY

The Mission of the Guardianship Association of NJ, Inc., is to be a resource for guardians and advocates including families, professionals, and concerned individuals who are involved in the lives of persons needing assistance. The organization provides education and a referral network and promotes ethical standards of practice.

www.ganji.org

Toll Free: 1-877-GUARDNJ
973-927-5714

The Mission of the Brain Injury Association of NJ is to support and to advocate for individuals affected by brain injury and raise public awareness through education and prevention.

www.bianj.org

info@bianj.org
732-745-0200

Fax 732-745-0211

Toll Free Helpline 1-800-669-4323

Brain Injury is damage to the brain, neither degenerative nor congenital in nature, caused by an external physical force that may cause impairments of cognition, behavior, emotion, or physical abilities. The consequences of brain injury may affect decision making and other conditions.

Each Education Institute publication treats an aspect of Guardianship. Other issues may apply to individual cases. Users are advised to consult an attorney if legal action is contemplated.



EDUCATION INSTITUTE Pamphlet Series

4

GUARDIANSHIP AND SURROGATE DECISION MAKING for Persons with Brain Injury

Helpful Hints for Families Caregivers Case Managers

The Guardianship Association of
New Jersey, Inc. (GANJI)

Affiliate, National Guardianship Association

Brain Injury Association
of New Jersey

Affiliate, The Brain Injury Association of America

Joan Kakascik, Ed.D.
Rene Carfi, LSW

Mary Ann Olsen, Esq.
Carol Cashin, LCSW

© GANJI, 2008

Download additional copies from www.ganji.org

SURROGATE DECISION MAKING

NON-JUDICIAL

The following documents do not need to be ordered by a Judge. If a person can understand what he or she is signing, these documents may prevent the necessity of Court action for Guardianship.

DURABLE POWER OF ATTORNEY may be limited or general and allows a person to choose an Agent to make financial and legal decisions as well as to access records.

MEDICAL POWER OF ATTORNEY may be limited or general and allows a person to choose an Agent to make medical decisions and to access records.

ADVANCE DIRECTIVE (informally "living will"; usually in the same document as the Medical Power of Attorney) states the medical/mental health treatments a person would accept or refuse if or when unable to communicate choice.

JUDICIAL

The following authority must be ordered by the Judge.

CONSERVATOR is a person appointed by a Court to manage the financial responsibilities of a person who requires assistance, is not mentally incapacitated, and consents to the Conservatorship.

LIMITED GUARDIAN recognizes that a person may need assistance in only some areas. The Guardian's limitations are specified in the Court Order.

GENERAL GUARDIAN applies to a person who cannot make decisions. The Guardian is authorized to make legal, financial, personal, and medical decisions for the person deemed by the Judge to have a mental incapacity.

INITIATING GUARDIANSHIP

PRO SE FILINGS

Pro Se filings are "do-it-yourself" filings. Documents are available from www.judiciary.state.nj/prose/10558.pdf. SCARC Guardianship Services, Inc., provides assistance with *Pro Se* filings in six Northern NJ counties.
Costs: Court fees, assessments, court appointed attorney; sliding scale may apply

NJ DHS BUREAU OF GUARDIANSHIP SERVICES (BGS)

Guardianship may be processed through BGS. Cases are initiated through the Division of Developmental Disabilities' case manager.

Costs: No cost for attorneys, assessment, court fees

NJ DHS DIVISION OF DISABILITY SERVICES (DDS)

Contact DDS about Traumatic Brain Injury Services.

Costs: Traumatic Brain Injury Fund to offset legal fees

LICENSED ELDER AND DISABILITY LAW ATTORNEY

Attorneys who specialize in Elder and Disability Law are familiar with matters relating to Guardianship and estate planning. In all Guardianship proceedings, the Court will appoint an attorney to represent the alleged incapacitated person.

Costs: Legal fees vary depending on services, complexity, and issues such as financial planning. There is a Court fee for filing. Medical and psychological assessments usually incur fees. The Court may order fees for the attorney representing the alleged incapacitated person.

VOLUNTEER LAWYERS FOR JUSTICE (VLJ)

COMMUNITY HEALTH LAW PROJECT (CHLP)

VLJ assists the petitioner to obtain guardianship of an alleged incapacitated person.

CHLP works for the client on matters such as: POA, MPOA, Will, Medical or Mental Health Advance Directives, and reversal of Guardianship.

Costs: No-cost or sliding scale

RESOURCES

PRIVATE AND PUBLIC GUARDIANSHIP SERVICES

SCARC Guardianship Services, Inc.

973-383-7442 ssheerin@scarc.org

Plan NJ

908-927-9010 www.plannj.org

Volunteer Guardians One-on-One

908-284-9100 www.volunteerguardianship.org

NJ Office of the Public Guardian (OPG)

609-530-8810 www.state.nj.us/health

ORGANIZATIONS AND PUBLIC AGENCIES

NJ Bar Association, Elder & Disability Law Section

732-249-5000 www.njsba.com

NJ Community Health Law Project

973-275-1175 www.chlp.org

Volunteer Lawyers for Justice (VLJ)

973-645-1955 www.volunteerlawyersnj.org

Brain Injury Association of NJ

1-800-669-4323 www.bianj.org

NJ Psychological Association (NJPA)

973-243-9800 www.Psychologynj.org

County Surrogate's Court

Guidance and procedures for filings

NJ Department of Health and Senior Services

800-792-8820 www.state.nj.us/health

NJ Division of Disability Services

888-285-3036 www.state.gov/humanservices/DDS

NJ Division of Developmental Disabilities

1-800-832-9173 www.state.nj.us/humanservices/DDD

NJ Department of Military and Veterans Affairs

1-800-624-0508 (see County Veterans Affairs Office)

COURT PROCEDURES

ASSESSMENTS are prepared by a physician and/or a NJ licensed clinical psychologist to address the decision-making abilities of the alleged incapacitated person.

JUDGMENT states the Court's decisions about capacity and the need for guardianship protections.

ANNUAL REPORT TO THE COURT is prepared by the Guardian summarizing the ward's status. See www.njcourtsonline.com "Legal Forms."

STANDARDS OF PRACTICE are guiding principles that govern Guardianship practices: self-determination, least restrictive alternative, substitute judgment, best interest. See websites for GANJI and National Guardianship Association www.guardianship.org