

Consumer Legal Guide



Serving as a Guardian for an Adult with Disabilities



**ILLINOIS STATE
BAR ASSOCIATION**

ASK A LAWYER

SERVING AS A GUARDIAN FOR AN ADULT WITH DISABILITIES

Serving as a guardian for a disabled adult age 18 and older is a serious responsibility. As guardian, you have been given control over certain or all aspects of the person's life.

At all times, you must follow the law, the guardianship order, and any other specific court orders pertaining to your guardianship. You must act in the ward's best interests and avoid any conflict of interest or appearance of impropriety when handling the ward's affairs. You are also expected to seek out and rely upon professional financial and legal assistance, when appropriate.

GUARDIANSHIP TERMINOLOGY

Certain terms have specific meanings when used in relation to guardians and guardianships:

- A "disabled person" is a person 18 years or older who is not fully able to manage his or her person or estate because of mental deterioration, physical incapacity, a mental illness, a developmental disability, a gambling or drug addiction, or fetal alcohol syndrome.
- A "ward" is the person who has been declared by the court to be disabled and the person for whom you have been appointed as guardian.
- A "Guardian ad Litem" is a person, typically an attorney, who has been appointed by the court to look out for the ward's best interests.
- A "guardianship order" means the court order setting forth your powers and duties as the guardian.
- "Letters of Office" are court documents which confirm your appointment as guardian; you should retain the originals in a safe place.

TYPES OF GUARDIANSHIP

Different types of guardianships have different types of duties and duration. Your powers as guardian will depend on the kind of guardianship which the court has established for your ward.

- “Guardianship of the estate” means that the guardian will be responsible for all financial and legal matters of the ward.
- “Guardianship of the person” means that the guardian will be responsible for all of the ward’s personal care matters, including healthcare and residential placement.
- “Plenary guardianship,” which can apply to a guardianship of the estate, of the person, or both, means that the guardian will have all of the powers and duties which are customarily granted to a guardian under Illinois law.
- “Limited guardianship,” which can apply to both a guardianship of the estate, of the person, or both, means the guardian will have only certain limited powers determined in the Court Order appointing the guardian.
- “Temporary guardianship,” which can apply to both a guardianship of the estate, of the person, or both, means that the guardian will be appointed in an emergency situation, such as the death of an existing guardian or before a permanent guardian can be appointed by the court, where a temporary guardianship is necessary for the immediate welfare and protection of the ward; a temporary guardianship only lasts for up to 60 days, although it can be extended by the court under certain circumstances.

- “Successor guardianship,” which can apply to both a guardianship of the estate, of the person, or both, means that a replacement guardian will be appointed upon the death, incapacity, resignation, or removal of the existing guardian of a living ward.
- “Testamentary guardianship,” which can apply to both a guardianship of the estate, of the person, or both, means that the guardian will be designated by a parent of a disabled person in his or her will to be appointed as guardian upon the parent’s death.

BASIC DUTIES OF A GUARDIAN OF THE PERSON

As guardian of the person, you will have certain basic duties under the law:

- You will be responsible for the personal and medical care of the ward and may have the actual physical custody of the ward, the ward’s minor children, and any adult children who are dependent on the ward for support and care.
- You will need to make decisions for the ward relating to personal care, health-care, and living arrangements to the extent specified in the guardianship order.
- You may need to file written reports to the court describing the ward’s current condition, living arrangements, typical activities, and a summary of your contact with the ward. You should check with the probate judge or an attorney to determine how frequently your court requires you to report.

LIMITATIONS ON THE GUARDIAN OF THE PERSON

There are certain things that the guardian cannot do without specific permission from the court. A specific court order is required before you can place the ward in a residential facility such as a nursing home and be-

fore you consent to a sterilization procedure. A court may authorize the guardian to petition for divorce on behalf of his or her ward if the court finds it is in the ward's best interest; it may also authorize the guardian to consent to the ward's marriage if it finds it is in the ward's best interest. A guardian cannot admit a ward to a mental health facility unless the ward requests the guardian do so and has the required capacity to make such a decision.

BASIC DUTIES OF A GUARDIAN OF THE ESTATE

As guardian of the ward's estate, you will need to manage the property, finances, and legal affairs of the ward. At a minimum, you will be required to:

- file an inventory of the ward's assets and income with the court within 60 days of the issuance of your Letters of Office;
- keep the ward's assets and income totally separate from your own assets and property;
- open an estate checking account, with your name as guardian, for the receipt of the ward's regular income and for you to use for payment of the ward's bills;
- arrange to have the ward's bills, bank statements, and other important mail sent directly to you; however, the ward should continue to receive his or her own personal mail;
- pay the ward's bills in a timely manner, using the ward's funds and income;
- contact all sources of the ward's income, such as the Social Security Administration, Department of Veterans Affairs and/or any pensions or employers and request that the ward's checks be sent to you or the estate checking account;

- be sure that the ward's real estate and other assets are securely protected and maintained, and restrict access to the property and accounts as determined to be in the ward's best interests;
- prudently manage and invest the ward's financial resources;
- prudently maintain the ward's real estate, which includes keeping it safe and insured;
- safeguard the ward's personal property and maintain insurance coverage if appropriate;
- apply the ward's assets to the comfort, care and education of the ward and any of his or her dependents;
- respond to any legal matters concerning the ward and be sure that he or she is represented in any court proceedings;
- pay the ward's taxes;
- apply for available public benefits and resources for the ward;
- file a written account of all financial transactions which you make on behalf of the ward setting forth all income received and expenditures made on behalf of the ward.

Illinois law provides that an accounting must be provided to the court one year after your appointment as guardian and every three years thereafter. Some courts require the account to be filed on an annual basis; you should check with an attorney to see how frequently accounts are required in your area. You also should find out whether it is necessary to schedule a court hearing for approval of the account. In counties where the "guardian ad litem" remains involved in the

case, you should provide him or her with a copy of the accounting.

LIMITATIONS ON THE GUARDIAN OF THE ESTATE

As guardian of the estate, there are certain things that you cannot do without specific permission from the court. You will need to file a petition with the court, and probably notify the “guardian ad litem” before doing any of the following:

- transfer or sell any of the ward’s personal property or real estate;
- mortgage the ward’s real estate or take out any other loans on the ward’s behalf;
- make any gifts from the ward’s estate, even if the ward gives you permission;
- expend any large sums of the ward’s money for unusual or extraordinary expenses, such as the purchase of a new home or automobile; or
- distribute any money to yourself or anyone else for guardian fees.

TERMINATING THE RESPONSIBILITIES OF THE GUARDIAN

Once a guardian is appointed, only the court can terminate or modify the terms of the guardianship. These circumstances may include the death of the ward or guardian, resignation of the guardian, and restoration of the ward’s rights (terminating the adjudication of disability).

DEATH OF THE WARD

Guardianship generally terminates when the ward dies. Upon the death of the ward, the guardian should:

- not make any further expenditures from the ward’s assets;

- preserve and protect the ward's assets until the court directs a final distribution; and
- notify the court and the guardian ad litem immediately of the ward's death.

In addition, a guardian of the estate should prepare a final accounting and request the court to approve a final distribution of the ward's assets from the guardianship account(s).

RESIGNATION OF THE GUARDIAN

To resign as guardian, you will need to file a petition with the court requesting permission. As part of the petition, you may be asked to prepare a final accounting as to the ward's estate. The court also may ask you to suggest a successor guardian; however, the choice of a successor guardian is totally up to the court.

REMOVAL OF THE GUARDIAN

The court has the power to remove you as guardian, if it is determined that you failed to file a required inventory or accounting; failed to post the required bond; are adjudicated to be a disabled person; are convicted of a felony; or did not properly perform your duties.

Before being removed as a guardian, you have a right to appear in court and explain your actions. If you are accused of any inappropriate action, you should contact an attorney.

TERMINATING THE GUARDIANSHIP

If there is a change in the ward's ability to manage his or her own affairs, the court can modify or terminate the terms of the guardianship. Regardless of his or her disability, the ward always retains the right to request that the guardianship be modified or terminated. A petition to modify or terminate the guardian can be brought at any time by the guardian, the ward, or any other person on the ward's behalf.

As guardian, you will need to participate in any hearings regarding the modification or termination of the guardianship, and take further actions as the court may direct.

STANDBY AND SHORT-TERM GUARDIANS

As guardian, you may designate in writing a qualified person to be a standby guardian, who will act as guardian of the ward if you die or are no longer willing or able to serve the ward appropriately. Once a person who has been appointed as a standby guardian learns that you are no longer able to serve as guardian for whatever reason, he or she will immediately assume all duties as guardian that were given to you in your guardianship order.

Similarly, you may also designate in writing a short-term guardian for your ward to take over your duties in the event that you are unavailable or unable to fulfill those duties. Unlike a standby guardian, the designation of a short-term guardian does not need the court's approval. A short-term guardian may act as guardian in place of you for up to 60 days during any 12-month period.

SEEKING LEGAL ADVICE

This pamphlet discusses the general duties and responsibilities of a guardian of the person or estate; it is not a substitute for obtaining professional legal advice. You should consult with a licensed attorney for a full explanation of the court process and duties involved in being a guardian.

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Illinois lawyer, look to
IllinoisLawyerFinder.com



IllinoisLawyerFinder.com is the Illinois State Bar Association's statewide lawyer directory on the Web. Search for lawyers by practice area, name, county or town.

Find a lawyer near you 24/7 on the Web at **IllinoisLawyerFinder.com** or call us from around the state at **217-525-5297** or **800-922-8757** Monday through Friday from 9:00 a.m. to 4:00 p.m.



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This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

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