

# Guardianship

When a child turns 18, he or she is considered an adult and assumes full responsibility for himself - no matter the level of functioning. For young adults needing assistance with financial, educational, vocational, or healthcare issues, some sort of guardianship or alternative should be explored. An attorney can provide you with possible options, but arrangements for the least restrictive option should be made.

It's important to remember that you don't need to have full guardianship if your adult child doesn't need help in every area of life. With limited guardianship the rules listed below apply only in the areas where you have guardianship. (For more information on less restrictive options to support your loved one, see Family Voices Fact Sheet "Guardianship Alternatives and Options for Supported Decision Making.")

If you have carefully considered these alternatives and have determined that guardianship is the best way to support your child's adult life due to his or her inability to function independently or with lesser forms of support, you'll have certain responsibilities. Within this fact sheet are important points to consider as you begin your role as guardian.

## How to Obtain Guardianship

Guardianship is a legal process in the state of Indiana that varies by county. One can begin prepare for filing for guardianship in the months prior to the child's 18<sup>th</sup> birthday, but the court date will likely not take place until after the child's 18<sup>th</sup> birthday.

- Retain an attorney. Be sure the attorney is experienced with guardianship cases.
- If the person is incapacitated by health conditions, obtain a Physician's Report or letter from the person's physician verifying that he or she cannot manage finances or make other personal decisions.
  - Have a good understanding of the individual's medical, financial and other affairs.
  - File a petition for guardianship with the court.
  - Pay the filing fee.
  - If the allegedly incapacitated person consents to the petition, or is unable to respond to inquiries due to disability, the court will hold a hearing at which witnesses will provide sworn testimony to support the allegations in the petition.
- If a guardian is appointed, the judge will issue the guardian legal documents (often called "letters of guardianship") permitting the guardian to act on behalf of the legally incapacitated person.

## Guardian Responsibilities

The court expects certain things from a guardian, even if the guardian is the protected individual's own parent. These involve protecting the person and their assets. **Every two years, a guardian must file an account of income, assets and expenses of the protected person with the court.** You must also do the following:

- Act in the best interest of the protected person.
- Keep the protected person's money separate from the guardian's money.
- Keep an inventory of money, property and other assets of the estate.

To learn more about these and other programs, contact Family Voices Indiana. We will assist you as you navigate health care systems and services, especially those available to individuals with special health care needs.  
**1-844-F2F-INFO**  
**1-844-232-4636**  
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- Keep all receipts of things purchased with the protected person's money.
- Keep an updated check register and/or spreadsheet that shows all deposits and expenses paid.
  - Protect the person's personal belongings.
  - Obtain permission from the court when selling anything belonging to the protected person, before making a major, unusual purchase with the person's money, and before moving the person away from their hometown.
    - Protect and/or invest the person's assets like a good investor (and as the court directs)
      - Any money or other items received for the protected person must be used for the person's room and board, medical care, personal effects, training, education and other services for the person.
      - If you fail to fulfill these obligations, you may be liable to the protected person for negligence, bad faith, and fraud.

### **Guardian Freedoms and Powers**

Guardians have plenty of freedom to manage the responsibilities of guardianship, as long as every decision is tested by asking, "Is this in the best interest of my protected person?" As long as the answer to that question is "yes," you are free to manage your responsibilities in the following ways.

- You can manage and pay caregivers a reasonable rate.
- You can delegate some responsibilities to the protected person himself (if he is capable) and/or to other people.
- You can consent for medical care and make medical decisions for the person.
- You can move the person to another residence in or outside of Indiana.
- You can arrange for community, medical, educational and therapeutic services for the person.
  - You can apply for government benefits (such as SSI, Medicaid and Medicare) for the person.
  - You can enter into contracts for the person's needs and receive money and other items for the person – as long as they are used for the person's needs.
    - You are not required to pay the protected person's debts as long as you haven't personally committed to the debt.
    - You can be paid a fee for your time, but you're not required to do this. The court must approve the fee, it must be reasonable, and the guardian must keep detailed records of time spent, dates for each time spent, and how time was spent.

For more information on guardianship, consult an attorney, or contact Family Voices Indiana at 1-844-323-4636 or [info@fvindiana.org](mailto:info@fvindiana.org). Family Voices also offers information on guardianship at <https://www.youtube.com/user/fvindiana>. The Arc of Indiana has guardianship information at <http://www.arcind.org/future-planning/guardianship/#09>.