



## **Control Over Personal Decisions: Guardianship, Conservatorship, and Other Options**

Adults with disabilities have the right to make their own choices about healthcare, money, where to live, and who to spend time with. In Colorado, anyone who is 18 or older is an adult. This fact sheet explains adult guardianship and outlines options to protect an individual's right to make their own decisions.

### **Frequently Asked Questions**

#### **▶ What is a guardian?**

If a judge says an individual cannot make important decisions for themselves, the judge may appoint (select) a guardian to make those decisions on their behalf.

Having a disability or medical condition does not automatically mean an individual needs a guardian. In fact, most people with disabilities do not need one.

A guardian has legal power to make decisions in the areas the judge says an individual needs help with. These areas might include:

- Managing personal life -- things like medical care, school, where to live, where to work, how to travel, and day-to-day spending such as clothes and meals.
- Handling money -- paying bills, paying rent, and saving money.

Important: It's easier to stop guardianship from happening than it is to end one after it's in place. That's why it is important to understand how to avoid having a guardian.

#### **▶ What is a conservator?**

If the court gives someone the power to handle another individual's money, they are called a conservator.

## ▶ How do I know if an individual has a guardian?

It can be confusing. For example, parents sometimes think they are still guardians after a child turns 18, but that is not true unless a judge has said they are still the guardian of an adult child.

Only a judge can appoint a guardian. No doctor, parent, provider, or agency can make someone the guardian for an individual. If a judge hasn't signed an official court order, the individual does not have a legal guardian.

When a judge appoints someone to be a guardian, there will be an official paper called the "Letters of Guardianship." It says:

- The name of the person for whom a guardian has been appointed
- The guardian's name
- What powers the guardian has

Without this paper, no one has legal authority to act as a guardian and make decisions for another individual. Always ask for a copy of the Letters of Guardianship when the judge appoints a guardian. If someone says they are a guardian, ask to see their Letters of Guardianship. If they can't show Letters of Guardianship or say they can't get a copy, this may mean they do not have legal authority.

To learn whether an individual is subject to guardianship:

- Call the county courthouse and ask the clerk if there is a guardian appointed. Go to the Colorado Judicial Branch website, select the county, and choose "Judges and Staff" from the dropdown menu.
- Visit the local courthouse in person and ask.

## ▶ Who can ask a judge to appoint a guardian?

Anyone can ask a judge to appoint a guardian. The person or agency who asks is called the "petitioner." It could be a family member, the state, a service provider, or another agency.

## ▶ How do you know if someone has asked a judge to give an individual a guardian?

The law says that the person who would be subject to the guardianship must receive something in writing saying the judge has been asked to give you a guardian at least 14 days before a court date where the judge will hear about the request for a guardian.

If you get this letter saying the judge may give you a guardian, contact a lawyer right away to understand your legal options.

### ▶ **What are the individual's rights at the guardianship hearing?**

Individuals have the right to:

- Be at the hearing.
- Have a lawyer.
- Say why they don't need a guardian and show evidence such as receipts or bills they have managed.
- Ask the judge to have an expert give the individual tests to see if they need a guardian.
- Request a private hearing so nobody else can see or hear what is said.
- To tell the court that they don't want a guardian.
- Tell the court who the individual would want as a guardian, if the judge decides the individual needs one.

### ▶ **Are there different kinds of guardians?**

Yes.

- **Unlimited guardianship:** Makes all decisions in the individual's personal life. If the individual also needs help with money, the judge will appoint a conservator (which can be the same person).
- **Limited guardianship:** Only makes decisions in certain areas, like health care. The judge will say what types of decisions the guardian can make. The law says a guardianship should be as limited as possible.
- **Temporary guardianship:** Appointed in emergencies, without a hearing, for up to 60 days. Before the 60 days end, there must be a hearing to decide if guardianship continues.

### ▶ **What is a guardian ad litem (GAL)?**

A guardian ad litem is not a guardian and is not a lawyer representing the individual who may be subject to guardianship. A GAL collects information and makes recommendations to the judge about what they think is best for the individual. What they think is "best" may not be what the individual wants.

## ▶ Does a guardian have to honor the individual's wishes?

Yes, as much as possible. The law says guardians must:

- Respect the individual's wishes, as much as possible
- Help the individual stay as independent as possible.

If the guardian cannot figure out what the individual wants, they must act in the individual's best interest. Even though the law says guardians have to do what the individual wants as much as possible, sometimes guardians don't.

If a guardian is ignoring an individual's wishes, the individual can:

- Talk to someone they trust.
- Tell the judge.

The judge can remind the guardian of the law or even replace them.

## ▶ What rights does an individual still have if they are in a guardianship?

Individuals in a guardianship have the right to:

- Vote, even in a full guardianship, unless the judge tells them that they can't.
- Keep a medical power of attorney that they signed before the guardianship.
- Seek help from a lawyer to end the guardianship.
- Usually not to be forced into institutions (mental health, substance use disorder, or developmental disability facilities)

## ▶ Why isn't guardianship always the best option?

Because the individual loses many basic rights. Guardianships can also:

- Cause family conflict.
- Involve long, stressful, and expensive court battles.
- Make people feel helpless and hopeless.
- Harm mental and physical health.

## ▶ Are there alternatives to guardianship?

Yes! Individuals can get support without losing their rights. Other legal and nonlegal options include:

- Supported decision-making.
- Power of attorney for money or healthcare.

- Healthcare surrogates.
- Living wills.
- Mental health advance directives.
- Representative payees to help manage SSI or SSDI.
- Bill-paying programs.
- Joint bank accounts or trusts.
- In-home supports.
- Advocacy services.

Colorado law says supported decision-making should be tried before guardianship whenever possible.

### ➤ What is supported decision-making?

A way to empower individuals to make decisions without a guardian. Friends, family members, professionals, and other people they trust can help an individual:

- Understand issues and choices.
- Ask questions.
- Get clear explanations.
- Share their decisions with others.
- Carry out their choices in daily life, health, safety, and money matters.

### ➤ Why is supported decision-making better than guardianship?

The individual stays in charge, With supported decision-making:

- No one can legally force the individual to live, work, or socialize in ways they don't want.
- The individual chooses who helps them and how.
- The individual gets help only in the areas they need.
- It focuses on strengths, rights, and dignity.
- People who use it are more independent, healthier, more likely to work, more connected to their communities, and better able to protect themselves from abuse.

### ➤ What can I do if someone is trying to make an individual have a guardian?

Get a lawyer right away. You can also contact Disability Justice for help.

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**[www.DisabilityJustice.com](http://www.DisabilityJustice.com)**