



## **Guardianship Your Rights Under Probate Code (Legally Incapacitated Individual)**

A **guardian** is a person who decides things for you because someone doesn't think you can do it yourself. This material tells you about your rights if someone says you need a guardian. If you have a guardian, this will tell you what you can do to change that.

This tells you what law and rules the court must use. These rules are only for someone who is confused and has difficulty making good choices that started after age 22. These rules are also for people with psychiatric or mental health issues. These are almost the same rules the court follows for people who have a developmental disability.

There are different kinds of guardians. A **full guardian** makes all decisions for you: medical treatment you may need, where you live, what kind of school or training you need, and may also take care of your money. A **limited guardian** will take care of those things you cannot take care of yourself. The court must decide what you can do and then give you a **limited guardian** to help you with the other things.

The court sometimes appoints a person to handle your money. That person is called a **conservator**. Sometimes you may get a conservator and a guardian, or your guardian can also be your conservator.

If someone thinks you need a guardian, they will fill out forms at the courthouse to ask for a hearing. You will get something about this from the court. It will say what day the court will have a hearing to see if you need a guardian. If you do not want a guardian, you will have to go to court.

If you think you no longer need a guardian or need just a limited guardian, you must go back to court. To do this, go to the Probate Court and ask for a **Petition to Modify a Guardianship Order**. Fill out this form. You can take it with you and take it back to the courthouse later.

The court does not have to honor your request and have a hearing if you have only had a guardian less than 182 days (about six months). You can write and ask the court to give you **special leave** to have a hearing. In your letter, explain why you need to have a hearing so quickly.

If you have had a guardian for more than six (6) months, the court must give you another hearing if you ask. When the court receives your letter, it has up to 28 days to set a date for the hearing.

The court might send a person out to talk with you. This person is called a **Guardian Ad Litem or GAL**. The Guardian Ad Litem will explain your rights to you. The Guardian Ad Litem will report to the court. The report will say if the Guardian Ad Litem thinks you need a guardian.

You can ask the judge to decide if you need a guardian or you can ask for a jury. A jury is a group of people who do not work for the court, who listen to the facts and then decide.

You can also ask that the hearing be **closed** if you do not want strangers to be present.

You have the right to a lawyer, but you need to ask for one. If you cannot pay, the court will pay for the lawyer. The lawyer should not be the Guardian Ad Litem. You should try to meet your lawyer to talk about your case and plan ways to show you can take care of your needs. If your lawyer does not contact you, you need to call. You can even send a letter with information about your case. Try to keep it short and simple.

You can have **witnesses** come to court and testify for you. You also can ask for an **independent evaluation** (tests) to describe your skills. This is done by a physician or mental health professional who does not know you. The court will pay for an independent evaluation if you cannot. If you want witnesses, a jury trial or an independent evaluation, let your lawyer know before your hearing.

At the hearing you may want to show:

1. You can understand and give permission for medical or other treatments you might need, *even if you have other people help you to understand.*
2. You can understand and release information about yourself.
3. You can make a home for yourself *or you live in a place where other people help meet your needs.*
4. You can take care of clothing, furniture, and other personal items.
5. You can understand and give permission for photographs or fingerprints.
6. You can arrange for any education or training you need.
7. You can buy your food, clothing and other needs *or make sure someone else does it for you.*
8. You can handle your money *or arrange for someone to handle it for you.*
9. Your needs are being met now (or could be met) without a guardian.

You have the right not to have a guardian if you can manage your own life, **even if you need help to do it**. If you prove that you can take care of yourself and make informed decisions about yourself, even if you need help to do it, the court should remove your guardian.

**Here is a list of the duties and responsibilities of the guardian:**

1. If the guardian has **custody** of you, he or she is responsible for your care, comfort and maintenance. The guardian can decide if you will live in or out of the state. The guardian must notify the court of your change of address within 14 days.
2. The guardian has to make sure that you are getting the best possible care to help you manage your own life as soon as possible.
3. The guardian is responsible for your clothing, furniture, cars or any other personal property. He or she should also make sure that your property is protected and safe.
4. If the court does not appoint a conservator to handle money matters, the guardian may use your money for your support, care and education.
5. The guardian should make a report to the court about how you are doing and what he/she has done for you at least once a year.
6. The guardian should keep things about you confidential and always be respectful of you.

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