

WHAT IS GUARDIANSHIP?

Guardianship is a legal relationship between a capable adult (the guardian) and a ward, either a minor (a person under eighteen years old) or a legally disabled person. A legally disabled person is a person who has been found by a court to be unable to care for personal needs and/or unable to manage financial resources. At the same time a person is declared disabled by the court, another person—a guardian—is appointed to care for personal or financial needs in those areas the disabled person cannot manage alone.

1. A guardian may be given complete responsibility for the ward if the disabled person is unable to take care of personal needs.
2. A limited guardian may be appointed if the disabled person is declared partially disabled and can care for some personal needs but may need help in other areas.
3. A guardianship may be appointed if a disabled person only needs help managing financial affairs.
4. A conservator may be appointed alone or in combination with a guardian to handle a disabled person's financial affairs.

WHEN SHOULD GUARDIANSHIP BE CONSIDERED?

Until a child reaches the age of majority, parents are considered the "natural" guardians. According to Kentucky law, the child is freed from parental control at the age of majority. Unless a court has determined that the individual is unable to care for personal or financial needs, the law presumes that the child is capable of exercising the rights of an adult. Many disabled persons continue to live in their home communities with the assistance of family and friends and do not need formal legal intervention. However, when an individual is not capable of exercising all the rights of an adult and friends and relatives are not able to provide informal assistance, guardianship may become necessary to legally enable another person to make decisions for and act on behalf of the disabled individual.

QUESTIONS TO ASK TO DETERMINE IF GUARDIANSHIP ARE NECESSARY

The need for a guardian is dependent on the abilities and disabilities of each individual. The decision of whether to seek the appointment of a guardian should be made with assistance from a lawyer.

Some questions to consider in determining whether guardianship is necessary are:

1. Is the disabled person able to adequately provide for personal needs for physical health, food, clothing, or shelter?
2. Is the disabled person able to manage personal financial resources effectively?
3. Is the disabled person going to be taken advantage of if no one is appointed to act as guardian?
4. Is assistance available through means other than guardianship?

HOW IS A PERSON DECLARED DISABLED AND A GUARDIAN APPOINTED?

Proceedings to determine disability and appoint a guardian take place in the district court where the person thought to be disabled—the "respondent"—lives or, if the person is a minor, where the will of the minor's last surviving parent was probated, if that will nominates a guardian. In all other cases, it is the county where the minor resides.

1. A petition, a form available from the local district court, is completed and filed with the court. Any person concerned with the welfare of the respondent may file the petition. The form asks for information about where the respondent lives, who is next of kin, and why a guardian is necessary.
2. At the same time the petition for a disability determination is filed, an application for appointment must also be filed by the person intending to be guardian of the respondent. This application is also available from the district court. The district court will not begin the disability determination process until this application is filed.
3. For the first initial court date **ONLY**, the Petitioner will need to have the Respondent's primary **physician provide a signed statement (ATTACHED)** present same to the Court before said the court date.
4. If the respondent does not have a lawyer, the court will appoint an attorney to provide representation. The court will pay the lawyer's fees if the court determines the respondent is unable to do so. The county attorney will represent the state in the process. The person who filed the petition (the petitioner) is not required to have an attorney but may choose to do so.
5. The district court will schedule a hearing before a jury of six (6) individuals. The jury will decide whether the respondent is fully or partially disabled in personal and/or financial affairs. The judge will write a court order appointing a guardian as indicated by the jury findings and designating those areas in which the individual is authorized to act in behalf of the disabled person. The court order will be filed with the court but must also be indexed in the county clerk's office.
6. At least two (2) weeks before the hearing the district court will send notice of the hearing date to: the petitioner, the respondent, the person who has applied to be the guardian, the respondent's next of kin, and the person who has custody of the respondent.
7. Before the hearing, the respondent must be examined by at least three (3) people: a physician, a psychologist, and a social worker (**see card on last page**). If the respondent is thought to be disabled because of mental retardation or mental illness, at least one of the examiners must be a professional qualified in mental retardation or mental health, as appropriate. Those persons will give the court a very thorough evaluation of the respondent, including assessments of the respondent's mental, physical, social, and education abilities and needs; a recommendation as to the kind and amount of guardianship needed; and a recommendation as to the most appropriate living arrangement and treatment program. If these evaluation reports are not filed with the petition, the county where the proceedings are held will pay for the evaluations if the court determines the respondent cannot pay for them.

If the respondent lives in a licensed facility for persons with mental illness or mental retardation and the facility files the petition, the facility will provide the court the required evaluation of the respondent when the petition is filed. The respondent may request a second

set of evaluations if it is believed that the initial evaluations are biased. These will be paid for by the county if the respondent is unable to afford them.

8. If the evaluation reports are filed with the petition, the district court will hold a hearing within thirty (30) days. Otherwise, the court will order the evaluations and schedule the hearing within sixty (60) days unless more time is needed.
9. The respondent must be present at the hearing unless the court determines that attendance would subject the person to serious risk of harm.
10. A person will NOT be declared disabled unless a guardian is appointed at the same time. This is one of the major changes under the new guardianship law.

WHAT ARE THE COSTS INVOLVED IN A DISABILITY PROCEEDING?

There is an initial filing fee of **\$121.⁵⁰** that **MUST** be paid at the time of filing for the appointment of the guardianship. The fee is payable to: **LaRue District Court Clerk.**

WHAT ARE THE DUTIES OF A GUARDIAN?

A guardian has responsibility for the care and custody of the ward. Depending upon the specific rights taken away from the respondent, the guardian's duties may include:

1. Arranging for a place for the ward to live.

Parents and guardians may admit their minor family members and wards to state mental retardation treatment centers without additional court hearings if treatment personnel at the centers approve the placement. This statute also allows a mildly or moderately mentally retarded adult to be voluntarily admitted upon approval of the treatment personnel, but persons voluntarily admitted must be allowed to be discharged upon written request unless involuntary civil commitment is pursued through court.
2. Arranging for educational, social, vocational, and rehabilitation services, as well as other services necessary to meet the ward's needs.
3. Providing necessary consent or approval to enable the ward to receive medical or other professional services (except that a guardian may not consent to abortion, sterilization, psycho-surgery, removal of a bodily organ, or amputation of a limb without approval of the court except in the event of an emergency requiring such action).
4. Managing the financial resources of the ward, unless a separate conservator has been appointed, and carrying out only those duties specifically granted by the court.
5. Reporting as required by law. **A guardian must report to the court within 60 days of being appointed and once every year as to the ward's finances**, the guardian must make a financial report to the court once every year. Forms for these reports (60 Day Inventory or Supplemental Inventory and Periodic/Final Settlement of Guardian/Conservator) are available from the Larue District Court Clerk's Office. The reports are intended to give the court an accounting to ensure the wards' finances are not misused. The financial report is a simple accounting of what money was received by the ward (for instance, the SSI check) and how it was distributed.

WHO MAY ACT AS GUARDIAN?

Any adult can seek to have a guardian appointed for another person. Most often a guardianship is requested by a family member, but guardianship can be requested by any interested person.

HOW LONG IS THE PERIOD OF APPOINTMENT FOR A GUARDIAN?

6. A guardian of a person who is totally disabled may be appointed for a period of "unlimited duration." The guardian may be appointed with no limit as to how long the individual may serve, although the court may choose to limit the period of appointment.

HOW TO CHANGE OR END GUARDIANSHIP

At any time, a ward, the ward's guardian or any person interested on behalf of the ward may ask the court to:

1. Terminate an order of disability,
2. Change an order of disability,
3. Remove or replace a guardian, or
4. Renew the appointment of a guardian.

A proceeding for any of the actions listed above is generally begun by filing a petition with the district court where the ward is residing. However, if the request is made by the disabled person, it may be by such informal means as a verbal request to the court or by letter, in which case the court will appoint someone to help fill out the petition.

**For further assistance please contact the
LaRue County Attorney's Office (270) 358-9223**

or

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