



GUARDIANSHIP: Your Legal Rights

The Disabilities Rights Center is dedicated to eliminating barriers existing in New Hampshire to the full and equal enjoyment of civil and other legal rights by people with disabilities.

This brochure is not meant to be legal advice. For specific legal advice an attorney should be consulted.

If you need help with a guardianship problem and you are a client of an area agency for developmental services or a community mental health center, you can ask your case manager to help you.

www.drcnh.org

Disabilities Rights Center

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Disabilities Rights Center

Protection and Advocacy System for New Hampshire

WHAT IS A GUARDIAN AND WHY DO I HAVE ONE?

A guardian is appointed by the Probate Court to "stand in your shoes" and make decisions for you. A Probate Court gives the guardian the power and duty of taking care of you (the ward) and/or your property. There are two main types of guardianship, a "guardian of the person" (who manages the ward's personal affairs) or "a guardian of the estate" (who manages the ward's financial affairs).

A judge appointed a guardian for you after a hearing, because based on the evidence and testimony he or she decided beyond a reasonable doubt that:

- You are unable to manage your own affairs;

WHAT ARE SOME LESS RESTRICTIVE ALTERNATIVES?

The law says the court should only appoint a guardian if there are no available alternative resources to make sure you stay safe, well, and get the services you need, and that your property and money is handled prudently. Some ways to get this help without losing your legal rights include:

- Revocable Power of Attorney
- Services such as visiting nurses, homemakers, home health aides, adult day care
- A mentor, or someone to give you advice and support, and help you make good decisions
- Representative payee for Social Security



- You need a guardian to make sure you get continuing care, supervision, and rehabilitation, or to manage your money and property;
- There are no available alternative resources which are suitable with respect to your welfare, safety, and rehabilitation or the prudent management of your property and money;
- It is the least restrictive form of intervention consistent with the preservation of your civil rights

GUARDIANS ARE ONLY APPOINTED AFTER A COURT HEARING WHERE:

- You have a right to a lawyer
- You have a right to notice of all the hearings and proceedings
- You have a right to attend the hearing and present your evidence and testimony



A GUARDIAN CANNOT:

- Admit you to an institution without the judge's permission or a hearing and the right to a lawyer
- Agree for you to have psychosurgery, sterilization, electroshock, or experimental treatments without the court's permission.

A GUARDIAN MUST:

- Safeguard your civil rights as much as possible.
- Only restrict your personal freedom to the extent necessary.
- If the guardian manages your money, he/she must protect and preserve it, and use it for **your** needs. If the guardian provides you with room and board, he/she cannot use your money for it unless the court agrees.

WHAT ARE THE DUTIES OF MY LAWYER IN A GUARDIANSHIP PROCEEDING?

Your lawyer is there to REPRESENT YOU and WHAT YOU WANT in the guardianship proceeding. The lawyer is not there to represent your best interests (that would be the job of a guardian ad litem). If you do not want a guardian, your lawyer should tell the judge this, and present any evidence there is showing why you don't need one.



WHAT RIGHTS DO I NO LONGER HAVE BECAUSE OF THE GUARDIANSHIP?

That depends on the judge's order. You can get the judge's order with the details of the guardianship over you, and read them or have someone read and explain them to you. Depending on the judge's order, the guardianship may limit your right to:

- Travel or decide where you live;
- Arrange for your medical care and other services;
- Manage your money and property;
- Marry or divorce;
- Have a driver's license;
- Make or change a will;
- Testify in court;
- Make contracts;
- Buy, sell or give away property;
- Vote;
- Give or refuse to give permission for other people to look at or get copies of your records;
- File a lawsuit.

The guardianship should only limit those rights you are unable to exercise, and only if there are no available alternative resources to help you exercise those rights.



HOW DO I END OR LIMIT THE GUARDIANSHIP?

To have the guardianship terminated, you need to send a letter requesting termination of the guardianship to the probate court that appointed the guardian. You can also file a form called "Motion to Terminate Guardianship/Conservatorship" and forward this form to the correct probate court. You can get this form from the Probate Court, from a link on the DRC website or you can call the DRC and ask that a copy be sent to you.

Once the court has received your letter or Motion, they will schedule a hearing. When the hearing has been scheduled, if you don't already have a lawyer, contact the court and let them know that you'd like them to appoint one for you. You will want to have someone else at the hearing who can testify about your ability to manage your own affairs.

The judge will decide whether to remove the guardian based on whether removal is in your best interest. The judge can also further limit the terms of the guardianship so that you retain more of your rights. If your guardian is not managing your affairs properly, or if you want someone else to be appointed your guardian, you can ask for this as well.

If you disagree with the decision to appoint a guardian over you, you have the right to challenge it.