

“The only way to make sure people you agree with can speak
is to support the rights of people you don’t agree with.”

Eleanor Holmes Norton

Guardianship Brief

Age eighteen (18), in Kentucky, is the age of accountability. At this time, all Kentuckians are of legal age to make decision for them’. Decisions include; medical decisions, voting, signing legal binding contracts, managing finances, social engagements, etc. A person with a disability has the same rights as a person without disabilities. When a person with a disability becomes an independent adult, parents are no longer allowed to make decisions for their family members.

Careful consideration should be made when assisting a person with a disability as to what, if any, assistance is needed once they become an adult. There are numerous ways of ensuring the rights of a person during their lifetime. Options in Kentucky are guardianship, conservatorships, and many alternatives.

Guardianship is determined through the courts of the Commonwealth. Parents or other legal authority may petition the court on behalf of a person to become their guardian. The decision will be made after a jury trial to determine if a person is capable of making decisions concerning their personal and financial affairs. If a person is determined to not capable, the court will declare a person to be disabled and appoint a guardian or conservator. Depending on the limitations and to the degree that a person with a disability can manage their affairs will determine the type of guardianship or conservatorship. Full guardianship, limited guardianship, or conservator will be determined. Also, there may be better options. Understanding all types of assistance is important and should be fully reviewed and understood before ever making the decision to file for guardianship. The goal is to protect the human, civil and personal rights of a person with a disability.

Assuming the responsibilities of a guardian means that a person is assuming duties to ensure that a person with a disability lives in a least restrictive environment, receives services to address social, vocational, educational or rehabilitative needs; ensure the medical needs are addressed and consent for treatment; manage financial affairs and manage any other duties as outlined by the court. Yearly reports to court are required explaining how person is doing and financial reports are to be filed every 2 years. Forms are available at local district court offices to use for reporting finances.

If a persons with disabilities is determined to be able to manage affairs but cannot manage finances a conservator may be appointed. Conservators manage the financial affairs only. Even with the appointment of a guardian, a conservator may be appointed by the court to manage finances. Therefore, the type of guardianship or conservatorship which may be appointed by the court is:

- full guardianship – a person is unable to take care of all their personal needs
- Limited guardianship – a person needs help in some areas and can take care of some areas by themselves.
- conservator – a person needs assistance with finances only

- Conservator and guardian – determination is made by the court that a person needs a guardian to manage some needs and a conservator to manage financial needs.

Persons who do not have any one to serve as a guardian and/or conservator may be awarded to the state. Courts decide the degree of management of affairs.

Alternative to guardianship may be the best option. Safeguards can be put into place to protect people while lessen the limits on civil rights. Many rights can be lost through guardianship and may be avoided through alternatives. Weighing the rewards and consequences may be challenging when making decisions regarding the needs of individuals. Advocating for independence and ensuring protection are challenges that should be considered. Keeping in mind, individuals can receive the protection they need while promoting independence.

Some alternatives may be power of attorney, representative payee, trusts, special needs trusts, advocacy, skills training, and financial safeguards through financial institutions, curators and adult services. Any person can appoint someone to act as attorney-in-fact if they understand what they are authorizing another person to do for them. The authority may be changed or revoked at any time. However, a durable power of attorney may be written so that, in the event a person is unable to make decisions, the authority continues.

A representative payee is a person who is authorized to receive and manage funds for a person with a disability. The payee is usually permitted through Social Security, Veterans or other governmental programs. Payees are not appointed by the courts but must report to the agency they are associated with how funds are spent. Limitations are to particular agencies and do not extent to any other affairs of the person.

Trust and special needs trust are ways of managing inheritances, property, money or a special trust that protects assets while continuing to receive benefits, such as Medicaid or SSI. Trust can be created by parents, family members, guardians, or a court. A trustee administers the trust but has no authority to make personal decisions for an individual for whom a trust is established. Restrictions may disqualify a person from receiving benefits and should be carefully reviewed when deciding to create a trust. Professional assistance is recommended when creating a trust or special needs trust.

Advocacy and skills training are preventative measures that will assist a person in become independent and promote self determination. Through acquiring skills in these areas a persons are involved in decision making roles. Multiples services are available throughout the Commonwealth to help a person with disabilities to develop skills in areas of weakness. If you would like to receive more information, contact the Arc of Kentucky office for specific information relating to your area of the state. Also simple financial safeguards such as the requirement of two signatures on all checks can help manage finances while promoting independence. Furthermore, curators may be requested by anyone who thinks they need assistance managing their finances or property. This process occurs in the local district courts without a hearing or determination of disability. For more information contact your local district clerk's office.

The commonwealth of Kentucky has many services and programs available to assist adults in self sufficiency in the community. Many preventive services, case management, counseling, transitional services, housing, transportation, protective services and advocacy programs are available. Persons are encouraged to contact their local office or the Arc of Kentucky office for more information.



Consider all options before making a decision concerning GUARDIANSHIP