



Elder Law Advisor

Your Trusted Guide on the Elder Care Path

Have You Been Told Your Loved One Needs a Guardianship?

We often receive calls from potential clients who have been told that their loved one needs the assistance of a legal guardian. In the most common situation, the person has been living independently, but is showing signs of dementia, and has been doing things that put themselves or others at risk of harm. Examples include leaving the stove burners on, locking themselves out of their home, wandering out of their home and getting lost, and mixing-up their medications. Other times a senior will have a behavioral disturbance, such as striking out at care center staff and fellow residents, and a guardian is needed to consent to psychiatric medical treatment and consent to placement in a secure care facility.

A guardian is a person who is appointed by a court to make health care and placement decisions for another person. We start the guardianship process by filing a court petition, explaining the circumstances to the court, and asking the court to appoint a legal guardian. We send out notices to interested persons, including close family members and people serving as trustee, power of attorney, and health care representative. A copy of the legal notice is personally delivered to the person in need of a guardianship (called a "respondent"). The respondent and interested parties have 15 days to object to the appointment of a legal guardian.

During the 15-day waiting period, a trained psychologist or nurse, known as the "court visitor," is appointed by the Judge to interview the respondent and all persons who are knowledgeable about the respondent's circumstances. The court visitor reports his or her find-

ings to the Judge, including the visitor's opinion about whether a guardian should be appointed.

From our first contact, it normally takes 20 to 25 days to obtain a guardianship. Sometimes there is an emergency situation requiring immediate action. The most common example is a respondent with a behavioral disturbance requiring immediate psychiatric treatment. In these situations, we can request a temporary emergency guardianship, which we can normally obtain within 5 or 6 days.

Sometimes the decision to file for guardianship is easy – the respondent's behavior is creating an immediate and serious risk of harm. Other times it is more difficult. For example, we often meet with adult children of aging parents concerned about the parent's ability to live independently, but the parent has "not yet" done anything risky or suffered harm. Filing for guardianship can create real animosity between adult children and aging parents. It is not a decision to be taken lightly. Sometimes the best decision is not to file for guardianship. An experienced elder law attorney can be of tremendous help in weighing the pros and cons, and the timing, of a guardianship petition.

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