

GUARDIANSHIPS

What You Need to Know

WHAT IS A GUARDIANSHIP?

A **guardianship** is when one person acts on behalf of another person who, for a variety of reasons, cannot take care of or act for themselves. A **guardian** is the person or organization appointed by the court to care for the individual who can no longer look after themselves.

ARTICLE 81 GUARDIANSHIPS

If you are looking to care for someone who is in that situation and is likely to suffer harm as a result, one option may be an Article 81 guardianship. A court procedure is needed to begin the process to obtain guardianship of the at-risk person, referred to as the Alleged Incapacitated Person (AIP). If the guardianship is granted, the AIP is then referred to as the Incapacitated Person (IP). There are three types of Article 81 Guardianships.



GUARDIAN OF THE PERSON

Handles all personal and medical matters. This includes making healthcare decisions, deciding where the person lives, and handling personal information.



GUARDIAN OF THE PROPERTY

Handles financial matters. This includes paying bills, organizing assets and entering into contracts on behalf of the person



GUARDIAN OF THE PERSON AND PROPERTY

Handles all financial, personal and medical matters.

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POWER OF ATTORNEY or ARTICLE 81 GUARDIANSHIP?

A **Power of Attorney (POA)** allows you to name someone to act on your behalf for certain matters - but to sign one, you must have the required level of 'legal capacity'. This means that you must understand what the document does and the possible consequences of signing it. If you lose the capacity to prepare your own POA, no one else can prepare one on your behalf.

With a POA, you choose the person who will act for you (your 'agent') and decide what powers they will have. This document only allows the agent to manage your **financial** matters. A different document, a health care proxy, is used to appoint an agent to handle your **medical** matters.

An **Article 81 Guardianship** may be your best option when the person you want to care for does not have the 'legal capacity' to sign a Power of Attorney. A person's memory problems could be due to Alzheimer's, dementia or another condition. You cannot obtain a POA on behalf of someone else. Unlike a POA, an Article 81 guardianship allows the guardian to handle financial matters or personal/medical matters - or both, depending on the person's needs.

CORE RESPONSIBILITIES OF AN ARTICLE 81 GUARDIAN

The responsibilities of a guardian are decided by the court. This means that a guardian cannot do something that the court has not approved in its order. Once you have been appointed as a guardian, you will be required to attend a training session.

The first responsibility of a guardian is to file the 90-day report with the court. This report will state whether you have taken the training course and must also list a plan of care for the person you have petitioned to become the guardian of.

As a guardian, you must file a report with the court once a year. This report will list all transactions you engaged in on behalf of the incapacitated person (IP). You must also visit the IP at least four times a year.

Upon the death of the IP or when the IP can resume taking care of themselves, you must file a final report and a petition for discharge as guardian.

GUARDIANSHIPS

The Process of Obtaining a Guardianship

STEP 1: PREPARING THE DOCUMENTS

There are three documents that must be submitted for a guardianship

- 1. The Petition:** This is a written request asking the court to begin a case. The person that files the petition is known as the 'petitioner' and must be over 18 years old. In the petition, you, as petitioner, must explain why a guardian should be appointed and why you should be that person.
- 2. The Order to Show Cause:** This is a legal document from the court notifying the AIP that an application for guardianship has been filed, what their rights are, and the powers you claim you should have if the court appoints you as their guardian.
- 3. Request for Judicial Intervention:** This is a request for a judge to be assigned to the case.

STEP 2: FILING THE DOCUMENTS

These documents must be filed in the Supreme or County Court where the AIP is living. There are fees to file these documents. You may be eligible for a fee waiver. Visit the nycourts.gov website for more information.

STEP 3: THE HEARING

A hearing will be held no more than 28 days after the judge signs the order to show cause. The hearing is a formal court proceeding where all sides appear in court and the petitioner must prove that the AIP needs a guardian. The Court will then appoint an evaluator, whose role is to interact with the AIP, investigate the claims in the petition and provide a report to the court with their findings.

STEP 4: APPOINTING A GUARDIAN

A guardian will be appointed if the court finds that the person is unable to care for themselves and would likely suffer harm without a guardian. A guardian can be either a person or an organization.

GUARDIANSHIPS

Additional Types of Guardianships

THERE ARE TWO ADDITIONAL TYPES OF GUARDIANSHIPS

ARTICLE 17-A GUARDIANSHIP

If your goal is to care for a person over 18 years of age who has a developmental disability or traumatic brain injury, and who therefore cannot properly care for themselves, an Article 17-A guardianship may be the right option.

Medical documentation stating the disability is necessary to obtain this kind of guardianship. The individual must be diagnosed with the disability before the age of 22. The petition for guardianship must be filed in the Surrogate's Court. Visit the [Surrogate's Court website](#) to find the proper forms to file.

The person appointed as the guardian is typically a parent, close family member or someone who is currently looking after the child because the child's biological parents are not present.

STANDBY GUARDIANSHIP

A Standby Guardianship is different. It applies only to the care of a minor child (in New York, under age 18) in two specific situations: the child's parent or legal guardian has a life-threatening illness or there is a risk of a judicial separation.

It is possible that someone may have to take over the care of your child if you have a serious medical condition, such as cancer, that may eventually affect your physical or mental ability to continue providing child care yourself. Or you may be separated from your child by a court decision, such as detention or deportation. A Standby Guardianship allows you to name a caretaker for your child, in advance.

This is a short-term measure. The guardian only has temporary authority to care for your child. You, as the parent, can cancel it at any time and if a longer-term solution is needed, the standby guardian must apply to the court for full guardianship.

GUARDIANSHIPS

Legal Resources

This fact sheet provides a basic overview of guardianship options in New York, with particular emphasis on Article 81 guardianships. However, the Article 81 guardianship process can be complicated and, if possible, you should seek advice and assistance from an attorney. For initial information on each of the documents mentioned in this fact sheet, the following resources may be a helpful starting point. Additional information and resources about guardianships can be found online.

A number of legal services organizations provide information about the guardianship process, though it may be difficult to find free assistance for help with petitioning the court. If hiring a private elder law attorney is an option for you but you do not know where to go, contact the Bar Association in the county where your loved one lives – they may have a list of attorneys that handle guardianship matters.

For a free 30-minute consultation and referral to a private attorney, contact Legal Referral Service (212-626-7373), in Spanish (917-832-1927) or visit their website at <https://www.nycbar.org/get-legal-help/>.

For more information about
ARTICLE 81 GUARDIANSHIPS

**NEW YORK LEGAL ASSISTANCE GROUP
ADVANCE PLANNING PROGRAM**
(212) 613-6514

For more information about
ARTICLE 17-A GUARDIANSHIPS

AHRC, INC. (212) 780-4408
COMMUNITY LEGAL ADVOCATES OF NEW YORK (516) 210-6763

For more information and assistance with
STANDBY GUARDIANSHIPS

THE FAMILY CENTER
(718) 789-3841 ext. 150

For more information and assistance with
**POWER OF ATTORNEYS AND OTHER LIFE PLANNING
DOCUMENTS**

Contact us at the Elderlaw Project at the City Bar Justice Center
(212) 382-6658