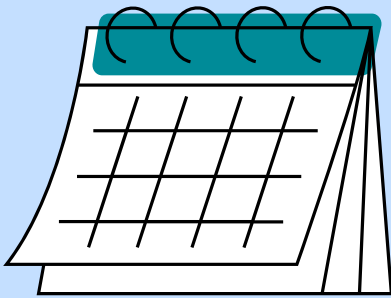


# The 5 Most Common Questions About Article 81 Guardianships, Answered

*By the Cancer Advocacy and Elderlaw Projects*

## When should I consider a Guardianship?

When relatives notice a loved one has begun struggling with routine tasks and increasingly needs more care and support, they often ask about a Power of Attorney (POA) or a Health Care Proxy (HCP) to help take care of their financial and medical matters. It's important to first determine whether your loved one has the legally required level of understanding ("legal capacity") to meet one-on-one with an attorney, express their wishes and choices about powers and authorizations, and understand the effects and consequences of signing the documents. If your loved one is showing signs of significant memory loss and impaired decision-making because of Alzheimer's, dementia, or other cognitive impairment, by law, they may no longer be able to sign these documents. In that case, you may need to consider guardianship under Article 81 of the NY Mental Hygiene Law, which may give you permissions similar to those of a POA or HCP.



## What Kind of Guardianship Would I Need?

An Article 81 Guardianship would allow you to manage and care for your loved one's medical matters, financial matters, or both, if they can no longer do so themselves. Depending on your loved one's capacity, the court will choose one of the three types of appointments: Guardian of the Property which gives you the ability to manage their financial matters (similar to a POA);



## What Kind of Guardianship Would I Need? (cont.)

Guardian of the Person which gives you the ability to manage your their personal and healthcare decisions (similar to a HCP); or Guardian of the Property and the Person, in which case you would manage your loved one's healthcare, personal and financial matters if they are unable to so.

## How do I Become a Guardian?

The first step in becoming a guardian is to file required documents with the Supreme or County Court where your loved one lives and pay the applicable fees. As the "Petitioner", you must explain to the court why your loved one needs a guardian. After you have filed the documents, you must attend a hearing and provide evidence that they cannot care for themselves. The court will then appoint an "Evaluator" that will meet with and assess your loved one and prepare a report for the court with findings of whether they need a guardian. The guardian designated can be you, another person or, even an organization; the court makes the final decision.



## What Am I Allowed to Do as a Guardian?

As a guardian, you can only exercise the powers given to you by the court, and nothing more. Once you have been appointed, you must file reports with the court explaining all the transactions that you carried out on behalf of your loved one. As a guardian, you have a duty to act in their best interest. Your powers will depend on whether you were appointed as their guardian of the property, guardian of the person, or both. Whichever it is, you must not exceed the authority permitted by the court.

## How Long Does a Guardianship Last?

The purpose of a guardianship is to provide support to the person where it is needed while allowing them to continue handling tasks that they can manage independently. It is important not to undermine your loved one's sense of autonomy unnecessarily. Therefore, unless the court decides otherwise, you can remain a guardian for as long as they need assistance. If your loved one's condition changes, the court can increase your powers if they need more help or decrease them if they can handle more responsibilities themselves. If your loved one fully regains their ability to manage their affairs, the court can terminate your guardianship. Only the court has the power to terminate guardianship.

Overall, the best option is to get a POA and HCP before you or your loved one develops cognitive challenges and are unable to prepare these important documents. However, if getting a POA or HCP is no longer possible, an Article 81 guardianship may be the best way for you to provide care and support to your loved one.

## Resources

For more information about guardianships, POAs or HCPs, click the resources below and consult with an attorney about filing for an Article 81 proceeding on behalf of a loved one:

- Guardianships: What You Need to Know ([English](#)) ([Spanish](#))
- Power of Attorney or Legal Guardianship: What Is The Difference, and Which One Do I Need? ([English](#)) ([Spanish](#))
- CUNY Elder Law Project [Guide To Becoming A Guardian Without A Lawyer](#)
- If you are interested in preparing a POA or HCP, you may contact the Elderlaw Project at 212-382-6658 or fill out this [intake form](#). Please note that the Elderlaw project does not provide representation on Article 81 guardianships.

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