

## Video 1: Title: WHAT IS GUARDIANSHIP?

Hello. Thanks for taking the time to learn more about Article 81 guardianship. You may be here because you're worried about a loved one's ability to take care of themselves, or possibly someone suggested that you might need a guardian. Maybe you or someone you care about is having trouble paying bills, getting necessary medical treatment, or might be unsafe living at home.

While caregivers, family members, or friends may want to help, they may not be able to make certain important decisions without a legal arrangement such as guardianship. If you or someone you know might be at risk of harm, a legal guardian may be needed.

When we talk about guardianship, we are often looking at activities of daily living. For example, is the person able to bathe, dress, prepare meals, or address medical concerns? These are often called personal needs. Are they able to manage their property? Can they pay bills, file taxes, and protect their information to avoid being taken advantage of?

Guardianship is a legal process where the court appoints a person or agency to make personal or financial decisions for an individual. In this video we are talking specifically about something called, Article 81 Guardianship for Incapacitated Adults. It got this name because it comes from Article 81 of the Mental Hygiene Law.

Here are a few things you need to know about guardianship

### **Chapter Heading: Things You need to Know about Guardianship**

Who can be a guardian? Anyone over the age of 18 can become a guardian. This can be a family member or a friend. But if there is no appropriate friend or family member available, the judge may select a qualified person or a non-profit organization to act as guardian.

The official legal term for someone who may need a guardian is Alleged Incapacitated Person, or AIP for short. You will hear this term in court and see it on forms.

For a judge to appoint a guardian, the judge needs to find that the AIP meets certain criteria. For example, the AIP must be:

Unable to meet some of their personal or financial needs

Be incapable of making reasonable decisions and

At risk of harm because they do not recognize that they need help.

A person may need a guardian due to Alzheimer's disease or other types of dementia, age-related changes, mental illness, or a Traumatic Brain Injury. Just because someone is diagnosed with one of these conditions or has a disability, does not mean they need a guardian. There are alternatives.

Guardianship is a last resort—it limits a person's independence and their ability to make some decisions for themselves. It should only be considered when there aren't other tools and services available. A judge will want to see that you've explored all alternatives before pursuing guardianship.

Let's discuss the different decision-making powers of a guardian.

### **Chapter Heading: Decision Making Powers of a Guardian**

The court will decide if a guardian should be appointed to make decisions about personal needs, finances and property, or both.

In some cases, there can be two guardians, one for personal needs and another for finances and property.

Different people or organizations may serve in each role. A guardian will only have the decision-making powers named in the court order, and a judge will only give powers necessary to remove the risk of harm.

Many guardians handle personal needs. They can choose a safe place to live, decide who will provide care, and help make medical decisions.

For those who need help managing their property, a guardian can help with paying bills, managing income and assets, and applying for and maintaining benefits.

Let's talk for a minute about the limitations of guardianship.

### **Chapter Heading: Limitations of Guardianship**

You may be considering guardianship for someone living with mental illness or a substance use issue. And while there are things a guardian can do to assist someone and encourage treatment, there are limitations. A guardian cannot do the following things:

- Force an individual to receive mental health or drug treatment,
- Make someone take medication, or
- Admit a person to a mental health facility or treatment program over their objection.

What a guardian *can do* is connect someone to services and create a stable and supportive environment that may make a person more open to accepting those services.

**While under guardianship,** a person still has their own personal, cultural, ethical, and religious beliefs that may inform their wishes and preferences. These beliefs should guide the guardian's decision-making.

Remember: any powers not specifically given to the guardian by a judge remain with the individual. This means that a person can receive support and assistance from the guardian, but still be in control of other parts of their life.

Guardianship is also designed to only last as long as needed. While many guardianships will last for the rest of a person's life, the court should be notified if a person no longer needs a guardian.

Let's move on and talk about what it means to be a guardian.

## **Chapter Heading: What it Means to be a Guardian**

Becoming a guardian is a big decision and responsibility. If you become the guardian of a friend or family member, you will be entering a more formal relationship with that person. You are also establishing a relationship with the court. Before you can act as a guardian, the court will ask you to file certain documents. You will also need to take a course that explains the roles and responsibilities of being a guardian.

Remember, your role is limited to only the powers listed in a court order. If you believe you need more or different powers, you can ask the court for those changes. You also may need court approval for big decisions such as moving someone from their home to a group residence, nursing home, or assisted living facility.

The court monitors the guardianship by reviewing reports filed by the guardian. Reports must be filed at the beginning of a guardianship, every year, and at the end of a guardianship. The court will want to see that the guardian is fulfilling their primary responsibility, which is to make sure a person's needs are met. It is extremely important to keep good records about income, costs, big decisions, and purchases made on the person's behalf. You want to be able to answer questions when your reports are reviewed.

Remember, just because you believe someone needs a guardian, does not mean the judge will agree. Be sure the situation truly meets the criteria for guardianship and that you have explored all other options. You can find resources about alternatives to guardianship on the court website. Please watch the video on alternatives to guardianship for more information.

I hope this information has been helpful. Thanks for watching.