

The Ins and Outs of Guardianship

Who might need a Guardian?

Guardianship is an option for people who cannot make decisions for themselves. Guardianship is a more restrictive measure than Power of Attorney (POA) and can only be approved by a Judge at a guardianship hearing. If a person has the capacity to assign their decision making authority to someone else then a POA is appropriate and this can be drawn up by an attorney. However, if a person does not have the capacity to understand the rights that are to be given to someone else then this person could need guardianship. Guardianship can be appropriate in several situations. Some people with dementia or severe forms of mental illness can need guardianship but SCARC Guardianship Services only assists in guardianship cases for people with developmental disabilities who need a guardian.

What are the different Types of Guardianship?

Guardianship isn't "one size fits all" but instead, it is tailored to each individual person and their needs. There are two distinct types of guardianship – **Plenary** guardianship (also known as full or general guardianship) and **Limited** guardianship. If a person cannot make any decisions for themselves then they will require plenary guardian. If a person has some capacity, then these rights should not be taken away, and this person would need a limited guardian. The courts require that the guardianship be the least restrictive guardianship that is appropriate. The areas of decision making that are looked at in guardianship hearings are: legal, medical, financial, education, vocational, residential choices, socialization, recreation and the acts of daily living.

The Responsibilities of the Guardian

The areas of a person's life that a guardian oversees depend upon the type of guardianship established. The duties and legal responsibilities of the guardian are enumerated in state statutes. The guardian is appointed by the court to make decisions, exercise specific legal rights, protect property and serve as an advocate for an individual who cannot perform these duties. A guardian can be the following:

- The Guardian as an Advocate- speaking out on behalf of your ward
 - The Guardian as a Surrogate Decision Maker- applying the principles of substituted judgment and best interest
 - The Guardian as Financial Planner and Manager- a fiduciary relationship
 - The Guardian as Coordinator and Monitor of Services- scheduling and monitoring for the best possible care
 - The Guardian as Healthcare Proxy- making medical decisions on behalf of the ward
- Guardianship is a trust between two people that must be carefully nurtured and constantly monitored to guarantee that the relationship will be successful.