
[Are there alternatives to guardianship?](#)

In a free society, the right to make personal decisions – such as where to live, whom to marry, or how to spend money – is a key part of human dignity. Taking away any of an adult's rights to make decisions is a serious matter and should be a last resort used only to the extent absolutely necessary. Often informal help with money management and other counsel will suffice.

There are several other ways besides a guardianship to act on behalf of someone whose decision-making ability is seriously interrupted and whose well-being is in jeopardy.

✓ **Durable power of attorney** allows a competent individual to name another person, known as the attorney in fact, to have authority to make decisions in specified areas.

✓ **Health care power of attorney** grants authority specifically for health care decisions.

✓ A **trust** is a legal plan for placing property under the control of a trustee who manages the property for the benefit of another person, a beneficiary.

✓ **Joint property** allows two or more persons to own property together.

✓ **Representative payeeship** exists when the Veterans Administration or Social Security Administration appoints someone to handle benefits checks for a person determined incapable of doing so.

Nevertheless, there are times that the best or only type of substituted decision-making for a person is by means of a guardianship.

[What is a guardianship?](#)

A guardianship is a legal relationship wherein a court appoints a person (**a guardian**) to make certain decisions for another person (**a ward**) proven to need such assistance. The decision-making power removed from a person should be as limited as possible.

Under Georgia law, a guardianship shall be “designed to encourage the development of maximum self-reliance and independence in the [person] and shall be ordered only to the extent necessitated by the person's actual and adaptive limitations.” (O.C.G.A. 29-5-7(h)).

A guardianship can be created on an **emergency** basis, and it can be **temporary** (limited in duration) or **permanent**. Guardianships can be limited in scope, removing as few rights as necessary.

Guardianships can be **of the person** or they can be **of the property**. The most restrictive guardianship is a **guardianship of the person and property** without any limits on the powers of the guardian.

A Guardianship of the Person can take away a person's rights to decide to marry, make contracts, consent to medical treatment, establish a residence, and bring or defend an action in court.

A Guardianship of the Property can take away a person's rights to decide to bring and defend actions in court, make contracts, buy and sell property, and enter into business and commercial transactions.

Since the court should remove as few rights as possible, and all of the rights under each type of guardianship are removed if the court says nothing about limits, it is essential that any guardianship action be specific as to what is needed.

[Who can be a guardian?](#)

Any person who is not a minor, has not been deemed “incapacitated” or does not have a substantial conflict of interest can be a guardian. The law lists preferences as to whom a court should appoint.

A person chosen by an adult, especially before any interruption in decision-making ability, has first preference. Thereafter, in descending order, preferences are a spouse, an adult child, and then the parent.

The court may pass over someone considered a preference to appoint someone else. If no one is available or qualified to become a person's guardian, the court may appoint the director of the county Department of Family and Children Services as guardian of the person and the county guardian as guardian of the property.

[What is the procedure for appointment of a guardian?](#)

Guardianship is imposed by a formal legal procedure since a person's right to make decisions should not be casually removed. Any interested person may file a petition by completing the form available from the county Probate Court. Limits to the guardianship should be listed in the petition.

Friends and relatives . . . should bring the abilities of the person to the court's attention so rights are not lost unnecessarily.

There is a filing fee. A report of a physician or psychologist who has examined the person within ten days of filing the petition should be provided where there is only one petitioner.

The court orders an evaluation by a disinterested psychologist. If probable cause of incapacity exists, the judge will then schedule a hearing from which the judge will decide to grant the guardianship or not.

Once a guardianship is imposed, any interested person, including the person under a guardianship, can ask the court to modify or terminate the guardianship.

What are the duties and the powers of the guardian?

The **guardian of the person** has the following duties toward the person:

- ✓ to be reasonably accessible and to maintain regular contact;
- ✓ to respect and maintain individual rights and dignity;
- ✓ to encourage the development of maximum self-reliance and independence;
- ✓ to arrange for support, care, well-being, training, and education in the least restrictive environment considering the needs and resources of the person;
- ✓ to make decisions in the specific areas of decision making the court has removed from the person;
- ✓ to report to the court within four months and annually thereafter.

The **guardian of the property** has the following duties:

- ✓ to sell, lease, encumber or exchange property of the person for payment of debts, support and education of the person or the person's dependents;
- ✓ to make and file an inventory;
- ✓ to file an annual report;
- ✓ to make decisions in the specific areas of decision making the court has removed from the person.

The guardian of the property is entitled to commissions for what s/he has received and paid out.

What are the rights of the person (ward)?

The **person** retains rights even under the most sweeping guardianship:

- ✓ to communicate freely and privately with persons other than the guardian, except as ordered by the court;
- ✓ to vote and to make a will, subject to some limitations and exceptions;
- ✓ to have a guardian acting in the person's best interest;
- ✓ to have a guardian who is reasonably accessible;
- ✓ to ask the court to modify or terminate the guardianship thereby restoring rights.

When no other means is available, a guardianship can be a useful and necessary way to provide for substituted decision-making of an adult who needs it. Georgia law recognizes the dignity of all human persons by authorizing the removal of decision-making abilities only to the extent absolutely necessary. Guardians, for their part, have special duties to the person and to the court. Everyone concerned has a responsibility to ensure that the person retains as many rights as possible.

The Georgia Advocacy Office is the Protection and Advocacy System for GA and receives funding through:

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GUARDIANSHIP

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ALTERNATIVES

i n G e o r g i a

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