

DID YOU KNOW THAT ONCE YOUR CHILD TURNS 18 YOU AUTOMATICALLY LOSE GUARDIANSHIP, EVEN IF THEY ARE UNABLE TO MAKE DECISIONS FOR THEMSELVES? IT IS IMPORTANT TO PLAN AHEAD.

WHAT IS GUARDIANSHIP?

In New York State, when a person becomes 18 years old, even if they are disabled, they are assumed to be legally competent to make decision for themselves. This means no other person is allowed to make a personal, medical or financial decision for that individual. If a person is intellectually or developmentally disabled, is over 18 years old and has difficulty making decisions for themselves, you can ask the Surrogate's Court to appoint a guardian for him or her. This kind of guardianship is called Article 17-A Guardianship. <https://nycourts.gov/CourtHelp/Guardianship/17A.shtml>

Not every child who has disabilities needs to have a guardian. If the child is able to make good decisions, then he or she may not require a guardian at all.

WHO MAY BE A GUARDIAN?

Any person 18 years of age or older may be guardian who is of sound mind and has not been convicted of a serious crime.

WHAT KIND OF PROOF OF I/DD IS REQUIRED FOR THE GUARDIANSHIP APPLICATION?

A certification from one physician and one psychologist or two physicians must be filed with the petition certifying that the person has a disability and is not able to manage his or her affairs because of intellectual disability, developmental disability or a traumatic head injury. The Surrogate's Court can appoint a guardian of the person, the property or both.

DO YOU NEED A LAWYER TO FILE ARTICLE 17-A GUARDIANSHIP FORMS?

No, you do not need a lawyer. This is something that you can do on your own if you choose to. The only cost to you may be the filing fee of \$20. The Guardianship application process may be time consuming, but it is not difficult. There are free and easy Do It Yourself forms that you can use to file your Guardianship application. Here are two sites that can assist you. <https://nycourts.gov/CourtHelp/DIY/guardianship17A.shtml>
<https://lawhelpinteractive.org/Interview/GenerateInterview/6787/engine>

WHAT KIND OF INFORMATION WILL BE REQUIRED FOR THE FORMS?

The county that you live in, your name, address and phone number, your relationship to the person who you are applying for Guardianship for, and your educational level. You will also need to provide information about the person who you are applying to be the Guardian of (name, date of birth, where he/she lives, if he/she has another parent).

WHAT ARE STAND-BY GUARDIANS?

A **stand-by guardian** is a person appointed to represent the person or estate, or both, of the disabled person. One Stand-by Guardian can be named as well as 2 Alternate Stand-by Guardians. These Stand-bys and Alternates must sign a Consent, Oath and Designation document, which they will need to get notarized and return to the court. The person that you are applying to be Guardian of will also need to be served (handed court papers).

WILL THERE BE A HEARING?

Yes, there is always a hearing. You will receive a hearing date from the court after your initial Guardianship application is processed. During the hearing, evidence is presented to the judge showing why the petitioner thinks a person needs a guardian. As a result of the Guardianship hearing, the judge officially appoints a guardian by issuing a Decree and Letters of Guardianship that specifically says what the guardian can do.

DOES YOUR DEVELOPMENTALLY DISABLED CHILD HAVE TO ATTEND THE GUARDIANSHIP HEARING?

No, your child will not have to attend if it will be too difficult for them. The judge can base his/her decision on the information provided by the doctors and the Guardian Ad Litem or GAL.

WHAT IS GUARDIAN AD LITEM (GAL)?

A Guardian Ad Litem (GAL) is someone the Judge assigns to help a person who cannot come to court or protect their rights and interests for a single case. The GAL will contact you and schedule an appointment to meet you and the person that you are requesting Guardianship for. They will also contact any Stand-by Guardians that are listed in your petition.

GALs are only responsible for helping a person with the guardianship matter that they are assigned to.

A GAL is an officer of the court and reports to the court what he or she is doing in the case. The Judge might ask the GAL for a recommendation and what he or she thinks is best for the person. All GALs are lawyers and have a duty to the person they are assigned to and to the court. The GAL will prepare a report for the Guardianship Hearing.

ARE THERE ANY COSTS ASSOCIATED WITH THE GAL?

Be aware that the GAL may ask for fees for performing his/her service. The fees must be approved by the court. Payment will be your responsibility. Knowing this can be a financial burden, do not hesitate to discuss this matter with the GAL.

ARE THERE ANY DIFFERENCES BETWEEN APPLYING FOR GUARDIANSHIP FOR SOMEONE WHO LIVES AT HOME VS. IN AN OPWDD FACILITY?

If the person for whom you are applying to be a Guardian of resides in a facility governed by OPWDD, then a representative of Mental Hygiene Legal Service is appointed by the court instead of a Guardian ad Litem. They act in the same capacity as a GAL.
