

¹FREQUENTLY ASKED QUESTIONS ABOUT GUARDIANSHIP IN MARYLAND

(From the May 2010 NAMI News)

1. What is a guardian?

A guardian is a person appointed by the Court to assume legal responsibility for another person, another person's property, or both. Guardianship may be appropriate for someone with a disability is unable to make responsible decisions concerning his or her medical care or finances. A court may appoint a guardian for a minor or for an adult who is not able to make or communicate responsible decisions about his or her welfare.

Guardians of minors and disabled persons have the same rights, powers, and duties that parents have. Unlike caretakers without legal guardianship, guardians have the authority to give consent or approval for medical or professional care and to make other important decisions in the best interests of the minor or disabled person.

2. Who can be a guardian?

Any of the following can become guardians: a disabled person's spouse, parents, or children; someone identified by the minor's or disabled person's deceased parent; someone caring for the minor or disabled person; someone the disabled person identified when he or she was able to make a responsible choice; and anyone the court considers appropriate.

If no one is available or willing to be a guardian, either a local social service agency or the Maryland Department of Aging may serve as guardian for a disabled adult.

3. How can someone be appointed as a guardian in Maryland?

To obtain guardianship, a person must file a petition requesting that the court appoint a guardian for a minor or disabled person. If the minor or disabled person is a Maryland resident, the person seeking guardianship must file the petition either in the county where the minor or disabled person resides or in the county where he or she has been admitted for medical care or treatment. If the minor or disabled person is not a Maryland resident, the petitioner can file in any county where the minor or disabled person is physically located.

Once the person seeking guardianship has filed the petition, the court will appoint an attorney for the minor or disabled person if he or she does not have one.

Maryland law requires that the person seeking guardianship submit two certifications of the individual's mental disability. A licensed physician must complete at least one of the certificates. A licensed psychologist, licensed clinical social worker, or another licensed physician must complete the second certificate.

After filing the petition and certificates with the court, the petitioner or his or her attorney must officially notify the minor or disabled person, his or her parents or guardians, and any other persons who may be interested in his or her welfare. The court then provides these parties time to respond to the petition.

The court will also schedule a hearing or jury trial, where a judge or jury decides whether guardianship is appropriate and who should be appointed as the guardian. As a practical matter, the judge usually decides the validity of the guardianship petition, but the Maryland Rules of Procedure provide that a jury trial is available unless waived.

The following sources contain useful information on obtaining guardianship in Maryland:

¹ *Disclaimer: This summary provides basic information about guardianship in Maryland and was prepared by the Pro-Bono Department of Hogan & Hartson LLP. This summary does not cover all the information on the subject matter, nor does it serve to provide legal advice. NAMI Montgomery County (NAMI MC) makes no representations or warranties as to the accuracy of the information contained in this summary. If you need legal advice, you should consult with an attorney. For other questions about this document please contact NAMI MC directly at 301-949-5852.*



NAMI
National Alliance on Mental Illness

Montgomery County

Maryland State Bar Association

<http://www.msba.org/departments/commpubl/publications/brochures/guardian.htm>

Maryland Department of Human Resources

<http://www.dhr.state.md.us/how/srvadult/guardian.htm>

The Guardianship Handbook: A Guide to Adult Guardianship Alternatives in Maryland.

<http://www.mdoa.state.md.us/documents/Guardian.htm>