

Do I need to file for a Guardianship for my 18 year old child who suffers from a disability??? That is an important question and one that troubles many parents and caregivers. A GUARDIANSHIP is a legal proceeding where a guardian is appointed by a COURT to exercise some or all the legal rights of the incapacitated person. The guardianship can be plenary where the incapacitated person loses all their legal rights or a limited guardianship where they can retain some rights such as the right to marry or vote or travel yet not be able to enter contracts, decide where they live or consent to medical treatment.

Who is the GUARDIAN?? A guardian is usually a parent or spouse or could be a public guardian who is appointed by the Court to care for the ward and all their assets.

How do I obtain a GUARDIANSHIP? A petition has to be filed with the court alleging the person is incapacitated. The petitioner is the person who submits the petition and makes the allegations of incapacity. The petitioner must be an adult and have personal knowledge of the alleged wards condition.

How is a person determined incapacitated?? After the Petition for incapacity is filed, the Court appoints an examining committee of at least two physicians and a psychologist. Those professional will each make an independent evaluation of the alleged ward and file a report with the court. The court will also appoint an attorney for the ward who will also meet the ward and evaluate the ward and file a report. When all the reports are filed the court will hold a hearing and the Judge will decide whether there will be a legal guardianship entered and what rights if any the ward will maintain. Once there is a Guardianship entered it remains in place until and unless the ward or someone on their behalf petitions the court to reinstate the ward's rights.

If you have been appointed the Guardian then you must retain an attorney to represent you for the life of the guardianship and you must file annual reports with the court on both the financials of the ward and their health completed by their treating physician. This may seem a daunting task but if you are the caregiver of an adult with severe disabilities it may be an option you should explore.

If you have any questions just call us at DIG and ask for Sharon or email Sharon.