

Are there alternatives to guardianship?

Yes. Guardianship is an intrusive intervention that should be used only as a last resort. Alternatives to guardianship may include supported decision-making, an advanced health care directive, a declaration for mental health treatment, a durable power of attorney, a special needs trust, or a representative payee.

How does a guardianship end?

Once a guardianship has been ordered, it lasts until your death unless the guardianship is terminated by the court. To terminate a guardianship, you may send a letter to the probate court in the county that your guardianship proceeding took place stating the reasons why the guardianship should end. If your guardian disagrees, a hearing may be necessary. You have the right to be present and to have an attorney with you at the hearing.

What is a guardian's report?

Once a guardianship is established, a guardian must file a written report each year. In that report, the guardian must explain the reasons why the guardianship should or should not continue.

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DISABILITY RIGHTS OREGON

QUESTIONS AND ANSWERS ON COURT-ORDERED ADULT GUARDIANSHIP

What is a guardian?

A guardian is an adult appointed by a court to make important decisions for you about your care and well-being.

For whom may a guardian be appointed?

The law presumes that an adult at least 18 years of age is capable of managing his/her own affairs. You must be considered "incapacitated" to have a guardian appointed.

Can you object to a proposed guardianship?

Yes. You may object to a petition for guardianship and request a hearing in front of a judge.

Can you object to the proposed guardian?

Yes. You may object to the proposed guardian. If you find an appropriate person to be guardian, they need to petition for guardianship.

When do you have to object to a proposed guardianship?

Objections to a petition for guardianship generally must be filed within 15 days of when you receive notice of the petition. Nonetheless, you may request at any time to have a guardianship terminated.

Can you present evidence and call witnesses when objecting to a proposed guardianship?

Yes. You have the right to present evidence and to call witnesses.

Do you have the right to a court-appointed attorney?

No. You have the right to be represented by an attorney, but not at the state's expense. You may contact legal aid in your county to request an attorney. You may also attempt to hire a private attorney to assist with an objection. The Oregon State Bar Lawyer Referral Service at 1-800-452-7636 may be able to provide a referral to an attorney.

What does it mean to be considered "incapacitated"?

A court must find by clear and convincing evidence that you are "incapacitated" in order to appoint a guardian. You are considered incapacitated if you cannot make decisions to get health care, food, shelter, and other care needed such that you face serious physical injury or illness. If a court finds that you cannot make those decisions, it may conclude that you need the continuing care and supervision of a guardian.

What are the limits of a legal guardianship?

A court may find that you are legally incapacitated in some areas, but not others. The guardianship order should be tailored to meet your actual limitations. The scope of the guardianship should be the least restrictive as possible. You may also request a limited guardianship.

What powers and duties would your guardian have?

Your guardian has only those powers given by the court. Guardians make decisions in three primary areas: residential placement, health care, and general care and comfort.

What powers and duties would your guardian not have?

A guardian may not authorize sterilization or use your money to pay for room and board provided by the guardian unless approved by the court. A guardian also may not put you in a mental health treatment facility, nursing home, or residential facility unless the guardian gives 15 days written notice to you and to the court. You must also be given the opportunity to object to the placement and have a hearing in front of a judge.

What is the role of the "court visitor"?

After a petition for guardianship has been filed, the court will send an independent investigator, called a "court visitor," to meet with you to verify whether or not you may need a guardian. You should provide the court visitor with the name and contact information of people who have relevant information about your current decision-making capacity or about the suitability of the proposed guardian. The court visitor prepares a report. The court considers the visitor's report when determining whether to order a guardianship and the scope of the guardianship.