

Claiming the Guardianship of an Elderly Parent

Often an aging parent will lose their ability to think clearly to make informed and meaningful decisions regarding their life. This growing inability may occur due to Alzheimer's disease, other forms of dementia, mental illness, stroke, brain injury, or other severe health or disability conditions. In the absence of your parent preparing for their elder years via a durable financial and medical power of attorney, guardianship may be needed to protect their best interests.

When There is No Durable Power of Attorney

If your parent did not prepare for this eventuality of requiring legally recognized help, you would not be allowed to create these documents once they are already mentally impaired. With that moment lost, claiming the guardianship of an elderly parent is a process that requires court approval to ensure the protections moving forward represent the best interest of the aging adult.

Medical Requirements for Guardianship

When a parent does not have an estate plan with the power of attorneys, they may bristle at the mere mention of requiring guardianship. Your first step is to obtain a doctor's letter or physician's certificate attesting to the patient's physical abilities and mental acuties. Suppose you meet with resistance to having your parent willingly submit to an evaluation. In that case, you may still apply for guardianship with the court, which can compel your parent to submit to a court-ordered independent medical examination.

When is it Time to Step In and File for Legal Guardianship?

There are signs to recognize, such as lapses in bill payments, lack of healthy foods in the home, or your parent's insistence they can drive. Driving is imperative to monitor because your parent endangers not just themselves but others. Additional signs it may be time for guardianship include self-isolation, hearing or sight loss, and general forgetfulness, which can lead to injury around stoves, stairs, and other risks.

Application for guardianship is filed with the clerk of superior court and is a fairly standard procedure; however, by state, there are nuances and differences in law and process. If possible, have a medical examination before applying. If not, the court can order one later. The court will begin legal guardianship proceedings to determine if you are fit to be the guardian. This process generally involves assessing any existing conflict of interests, financial responsibility, and even a criminal background check.

Notifying Your Parent and Family of the Proceedings

With the application on file and awaiting court approval, you must notify your parent, the proposed ward, of the application. This notification is a legal requirement and can sometimes create family conflict. A parent's frantic contact with other family members upon receiving the guardianship documentation is not uncommon. Notifying these family members or others with a right to know is not only a legal requirement but also best discussed before filing. Having family on board to protect your parent with guardianship is best when you mutually agree.

Your Parent's Right to Representation

The court will appoint an [Attorney Ad Litem](#) to represent your parent. This person will legally advocate on your parent's behalf, representing their needs. The court may also appoint a [Guardian Ad Litem](#), who may not necessarily be a lawyer, to represent the interests of a parent who may be incapacitated. Typically, court hearings occur between 15 and 30 days from the respondent (your parent) being provided the filing for guardianship. It may take longer if the court requests a multidisciplinary evaluation. In this instance, the clerk of the court may appoint an interim guardian whose powers include addressing the respondent's immediate needs.

A Multidisciplinary Evaluation (MDE)

A thorough evaluation may include medical, psychological, daily life skills, education, social work, vocational rehabilitation, and occupational therapy needs of your parent, the respondent. In the case of an aging parent, the focus tends to remain on medical, psychological, and daily life skill assessments.

After a full assessment of your parent's unique situation and your application for guardianship, the court will decide based on the best interests of your parent, the ward/respondent. There is a process to appeal the decision, generally filed in writing within ten days of the court's decision. The appeal will prompt a new hearing before a superior court judge.

Guardianship Laws Vary By State

When applying for guardianship, it is crucial to understand the state laws where you live. Differences in terminology exist between states; some require a guardian to control your parent's home environment, health care, and day-to-day needs, and a conservatorship which appoints someone to make financial decisions such as paying bills, investment management, and budgeting. Some states will use the terms interchangeably.

The process can take substantial time and money, particularly if family members disagree. Many states give preference to the ward's spouse, adult children, and other family members as they know the family member and their needs the best. The court may also appoint a professional or public guardian. All court-appointed guardians are entitled to reasonable compensation, although family members or friends typically will not charge for the service. Compensation for guardians must have court approval.

If appointed your parent's legal guardian, it will be stated in a written court order. You will remain their guardian until your parent dies, the court finds your parent is no longer incapacitated, you die, or the court finds it is in the ward's best interest to remove you as the guardian or conservator.

Guardianship is the best option if your parent has no appointed durable power of attorney for health care and finances and they need your help due to advancing age, disability or illness. You should consult an estate planning or elder law attorney if you want to establish guardianship for your aging parent. They can guide you through applying for guardianship or conservatorship and help manage your expectations regarding the best care for your parent.