

Guardianship when your child turns 18



Parker Counsel Legal Services legal@parkercounsel.com 833-RED-BOOT
(833-733-2668) Serving clients in Austin Texas, Dallas Texas, Western
Massachusetts, Northern New Jersey, and Portsmouth New Hampshire

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If your child has a developmental disability or other special need that limits their ability to make personal and medical decisions for themselves, your role as a parent will change drastically when your child turns 18. At that age, you no longer have the right to make medical or educational decisions for your child, and you no longer have the right to even receive information about your child unless your child gives permission. This means you may not be able to attend special education meetings at school or talk to your child's doctor. It all depends on whether your child agrees to let you do so – and your child can change their mind at any time.

During your child's 17th year you should look into whether a guardianship is needed for your child.

What is Guardianship?

If an adult (person 18 years or older) does not have the physical or mental capacity to care for themselves, a court can determine that they are in need of protection and can appoint a guardian who has the authority to make some or all decisions on their behalf. Once a guardian is appointed by a court, that guardian will be responsible for making sure that the individual has access to resources and care, and the guardian will report periodically to the court on the condition of the individual. If the appointed guardian is unable to continue, another person will be appointed to take over as guardian.

What is a Guardian of the Person versus Guardian of the Estate?

A Guardian of the Person is responsible for the personal care of the individual. A Guardian of the Estate handles the individual's money, property, and financial affairs. Most guardianships for a person who was disabled during childhood are Guardian of the Person only. As long as the only income is from SSI benefits or a small income from a part-time job, a Guardian of the Estate is not needed.

What does a Guardian do?

In a full guardianship, the guardian has similar responsibilities as a parent, in that they should seek housing, food and any personal care needed for the individual. The guardian will also make sure that the individual has healthcare when needed, and will make decisions necessary to that care. However, the guardian is not personally responsible to provide the housing or any financial resources, and the guardian is not liable for the actions of the individual.

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What is a partial Guardianship?

An individual who is able to do some things can retain the right to have control over those areas, and the Guardian would have limited authority only over areas in which the individual does not have capacity to act for themselves. It is common to see guardianships where an individual retains the right to vote or drive (subject to their ability to pass licensing standards). Some individuals may be capable of handling their medical affairs but not their financial affairs, or vice versa. Some individuals retain the right to determine where they live, others may retain the right to make employment decisions for themselves. In other words, a guardianship can, and should, be tailored to the specific needs of each individual.

Who is appointed as the Guardian?

For children with developmental disabilities who turn 18, the first guardian is usually one or both of the parents. When family members are able and willing to act as guardian, they will generally be appointed. The court will consider any criminal background of the person seeking to be named as guardian, and will also look at any other relevant information to make sure a reliable, trustworthy person is appointed as guardian. If no family is able or willing to act as guardian, other persons who have a relationship with the individual can be appointed, and there are professional, state licensed guardians that can be appointed if no one else is available.

What is the process for seeking guardianship?

An application by the person seeking to be named as guardian is filed with the Court in the location where the individual lives. The applicant will provide medical and other evidence to the Court that the person lacks legal capacity to care for themselves. An attorney is often appointed for the individual, who will meet with the individual and the person seeking to be named as the guardian, review the evidence, and make a determination as to whether the best interests of the individual will be served by appointing a guardian. Once everyone is in agreement, there is a hearing before a judge who will issue an order appointing the guardian. The guardian may have to post a bond as well. Once the order of guardianship is issued, the new Guardian will be able to communicate with schools, doctors, and agencies on behalf of the individual.