

Guardianship FAQ

What is a guardianship of an adult?

A guardianship of an adult is when a probate court decides that a person needs assistance making decisions because the person lacks the ability to make important decisions about his or her health or safety.

How is a guardianship created?

A guardianship is created in probate court.

- The guardianship case begins when someone who believes that an adult needs a guardianship files a document with the court called a petition.
- After the petition is filed, the court follows a process to decide if a guardianship should be created.

What are some of the parts of the court process?

There are many steps of the court process, but only a few are mentioned here.

- The court orders that an evaluation be done on the person who might be in need of a guardian.
- A hearing is set for the parties to go to court and present evidence.
- The court decides if the guardianship is needed, based on the results of the evaluation and the evidence that the parties present in court.
- If a guardianship is needed, the court determines who will be the guardian.

Who can be a guardian?

The guardian of an adult can be anyone who the probate court determines is willing, able, and appropriate.

- Before there is a guardianship, a person can pick out a person he or she would like to be his or her guardian and write that down in a legal document called an advance directive.
- Family members can be guardians.
- Friends can be guardians.
- People who care about the person under guardianship can be guardian.

- In other states, people or businesses are paid to be the guardian of the person. That does not happen much, if at all, in Georgia.
- Volunteers can be guardians.
- A county government can create a “county guardian” who can step in when there is no friend, family, volunteer, or anyone else to serve.

If a person has a disability or a medical condition like dementia, should that person have a guardian?

Not everyone who has a disability needs a guardian. A guardianship is a very severe, possibly permanent, thing that should be the last thing put in place to help a person who is having trouble with decisions.

- Research studies in medicine and social sciences have found that people are happier and healthier when they have control over their lives and can make decisions for themselves.
- Even when there is a guardianship, the person under guardianship still gets to be a part of the decisions the guardian makes.

What if a person is making bad decisions? Could a guardian make the person stop making bad decisions?

A guardianship is for people who have physical or mental disabilities or other impairments that interfere with their ability to make decisions or to express their decisions. A guardianship cannot be used to make people stop making bad decisions. Making a bad decision means that someone understands the choice is making but chooses the bad decision anyway.

What does a guardian do?

The court decides the duties the guardian has and writes those duties in a court order, but there are some things that all guardians must do.

- A guardian respects the dignity and rights of a person under guardianship.
- A guardian has to get to know the capacities, limitations, needs, opportunities, and physical and mental health of the person under guardianship.
- A guardian takes care of the personal effects of the person under guardianship.
- A guardian must arrange for the support, care, education, health, and welfare of the person under guardianship.

- A guardian files reports with the court that update the court about the person under guardianship, the guardianship itself, or the guardian.
- If the person under guardianship has property or income and cannot take care of it, a guardian asks the court to appoint a conservator to handle the person's estate.
- If there is a conservator, a guardian has to work together with the conservator to get the things the person under guardianship needs.

What else can a guardian do?

The law on adult guardianship gives a guardian optional powers. Unless the probate court says otherwise, a guardian may choose to make decisions about the issues listed below. The guardian is not required to make decisions about the issues listed below.

- Decisions about where the person will live.
- Consent for medical care or authorization for other professionals to provide services.
- Standing in for the person under guardianship in lawsuits and legal issues.

Are there things that the guardian cannot do?

There are many things a guardian cannot do. Some of the things a guardian cannot do are listed below. Other things a guardian cannot do are discussed later on this page. These Frequently Asked Questions do not have a complete list of all of the things a guardian cannot do.

- A guardian cannot make a person stop abusing drugs or alcohol.
- A guardian cannot physically control or restrain a person.
- A guardian cannot control with whom who the person under guardianship talks to or visits.
- A guardian cannot lock a person in a facility to keep the person safe.
- A guardian cannot make a person "behave" or act better.

Can a guardian make the person under guardianship take medication?

No, a guardian cannot force an adult under guardianship to take medication. People under guardianship have the right to refuse to take medication. Only a physician can inject or force a medication when the person refuses to take the medication.

- A guardian cannot tell a physician it is okay to give a person medicine if the person says he or she will not take the medicine. The physician can give the medication against the will of the person not because the guardian said it was okay, but because the law lets a physician give the medication in certain situations.

What if I or someone else in my family wants to be the guardian?

Because the probate court decides who a guardian will be, the probate court has to know that you or your family member wishes to be guardian. You must file a petition or otherwise take steps to let the court know that you are able and willing to be a guardian.

Why is the Georgia Department of Human Services (DHS) the guardian for some people?

DHS is the guardian of last resort, and that means DHS should not be appointed if there is anyone else who can be the guardian.

- If no one, no friend, no family, no volunteer, no county guardian, or no other person or business, is willing, able, or appropriate, DHS can be appointed.

If DHS is the guardian of a person or if the person is a “ward of the state,” does DHS provide money, supplies, or other resources for the person under guardianship?

As guardian, DHS arranges for the person to have medical care, housing, clothing, and food. DHS uses the money, supplies, or other resources that the person has for these things.

- DHS does not have a type of health insurance for persons under guardianship who have DHS as guardian. If the person does not have health insurance or money to pay for medical care, DHS looks for free or reduced-cost medical care, such as free clinics, for the person.
- If a person under guardianship needs medical devices or supplies but has no health insurance or money to cover the cost, DHS looks for support from family, friends, or groups, such as faith communities or nonprofit agencies, that might be able to help get the devices or supplies.
- For clothing or items for hygiene, like deodorant, DHS uses the money the person has. If the person has no money for these things, DHS looks for support from family, friends, or groups, such as faith communities or nonprofit agencies, that might be able to help get the items.

- DHS fills out applications for services and benefits that the person under guardianship might be eligible for, such as food stamps, Medicaid, or public housing. Having DHS as a guardian does not make someone eligible for benefits if the person does not meet all of the requirements for getting the benefit.

When someone is a “ward of the state,” is that like being a foster child, in the custody of the state?

No, adult guardianship is not like foster care or guardianship of children.

- A guardian of an adult does not give physical custody, as it does with children.
- For children in foster care, there are federal and state funds that pay for food, clothing, shelter, medical care, and other services for children. There is no funding like this for adults who have DHS as their guardian.

Does DHS have hospitals, residences, or other types of housing for adults under guardianship who have DHS as a guardian?

DHS does not have hospitals, residences, or other types of housing for adults under guardianship. Adults under guardianship live in many types of housing, such as apartments, houses, nursing homes, or personal care homes. DHS does not own or operate any residence or facility for adults under guardianship.

- A guardian can help decide where a person lives.
- The guardian must help the person live as independently as possible.
- If a person does not want to be in a hospital or nursing home, the guardian must help the person live out of the hospital or in a nursing home if at all possible.
- A guardian cannot force a person into inpatient care in a psychiatric or mental health hospital if the person refuses to go. Only a doctor or a court can make a person go to inpatient treatment for a mental illness, not a guardian.
- When a guardian makes a decision about where the person under guardianship should live, the guardian must consider what the person can afford, if the housing is safe, and if the person’s needs can be met in that place.
- If a person has no money to pay for housing, DHS fills out applications for housing assistance, such as public housing or rental assistance. If the person does not qualify for housing assistance, DHS looks for support from family, friends, or groups, such as faith communities or nonprofit agencies, that might be able to help pay for housing.

DHS is the guardian of my loved one. What role can I play in the life of my loved one?

The role someone plays in the life of a person under guardianship is determined primarily by what the person under guardianship wants. Safety and other practical issues can affect the role that you play in the life of the person under guardianship. The probate court can also control the role a loved one plays in the life of the person under guardianship.

- A guardian must protect confidential information of the person under guardianship. A guardian may not be able to tell you all of the information you would like to know about your loved one.
- A guardian can listen to what a loved one thinks is best or wants for the person under guardianship, but the guardian has to consider more than that. A guardian has to do what is best for the person under guardianship. That may or may not be the same thing as what you think is best for the person.