

# What Are the Powers of a Guardian?

When loved ones become mentally incapacitated they may need a court-appointed guardian to handle their personal health care and financial needs.

That can be avoided if the individuals execute a durable power of attorney and a health care proxy before becoming incapacitated. But sometimes people fail to do that. A court-appointed guardian has powers to make many decisions on behalf of the individuals. In effect, the guardian steps into their shoes. The powers guardians have generally include:

## Property Management

1. Collecting all income, including but not limited to Social Security, dividends and interest as well as dealing with pensions, retirement accounts such as IRAs, SEPs and similar types of plans and annuities.
2. Endorsing, collecting, negotiating, depositing and withdrawing Social Security, Veterans Administration, and negotiable instruments.
3. Handling all banking transactions, including setting up checking and savings accounts and certificates of deposit.
4. Accessing safe deposit boxes, vaults, safes, confidential financial records, reports and statements.
6. Applying for government and private benefits.
7. Claiming, negotiating, obtaining and settling claims and actions for government entitlements and benefits.
8. Acquiring and maintaining Medicare as well as dealing with Medicare and Medicaid claims, litigation and settlements.
9. Preparing and submitting applications for medical assistance and any required documentation.
10. Filing and signing tax returns and dealing with federal, state, and local tax authorities on claims, litigation, settlements and other matters.
11. Making and implementing tax-savings decisions.
12. Marshaling the person's assets and investing them prudently and intelligently. Seeking reasonable income and using as much of the income and principal as necessary for the person's comfort, support, maintenance and well-being.
13. Providing for the person's maintenance and support.
14. Applying assets toward the cost of appropriate care at a long-term care facility.
15. Paying or prepaying funeral expenses.
16. Settling bills after death, if the debts were incurred before death and the authority to pay such bills would otherwise have existed, until a temporary administrator or an executor is appointed.
17. Retaining attorneys, accountants, investment advisers and similar professionals to handle property and other affairs and paying them subject to court approval.
18. Applying for, paying and handling all claims and settlements including insurance transactions.

19. Handling estate transactions.
20. Defending or maintaining any civil judicial proceedings.

## **Personal Needs**

1. Making decisions regarding the general environment and other social aspects of life.
2. Determining whether the person should travel.
3. Consenting to or refusing medical or dental treatment.
4. Choosing the person's place of residence.
5. Accessing and disclosing medical and confidential records. In terms of finances or personal needs, the guardian can also take any other actions the court deems appropriate to meet the individual's needs.

Clearly the guardian has considerable discretion, which is why the court usually requires an initial report of the incapacitated person's finances and an annual accounting after that.

Despite the extensive list of powers, there are certain actions guardians cannot take. For example, they cannot transfer a person's assets into their own names, nor can they borrow money from the person or make risky investments.

It is not easy being a guardian. There may be contention in a family as to who will be the guardian and many people find the job too difficult. With court oversight, the job can become cumbersome and the time and effort required can make it stressful, especially when the court requires detailed records of money spent on food and clothing and other activities.

However, most family members believe it is their moral obligation to help their loved ones.

If you feel someone needs a guardian, speak with your attorney, who can prepare a guardianship petition and assist with other matters.

To avoid having an individual become a guardian for you in the event you become incapacitated, have your attorney draft certain legal documents as soon as possible. Choose the person *you* want to make financial and health care decisions on your behalf. Having a financial power of attorney and a health care proxy in place will save your loved ones the burden and expense of going to court for guardianship. Once a person is incapacitated and unable to make day-to-day decisions, it is too late to get these routine documents drafted.

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