

A guardian is a person or agency who makes decisions for someone who cannot make decisions for themselves. In legal terms, this person is considered “incapacitated.” This resource explains the legal process for becoming a guardian for another person.

WHAT DOES IT MEAN TO BE AN INCAPACITATED PERSON?

An incapacitated person cannot *make or communicate* decisions about their health, safety, financial, or self-care needs. The court decides whether a person is incapacitated at a court hearing. Only an incapacitated person can have a guardian appointed. However, not every incapacitated person needs a guardian. Guardianship may be considered when the person does not have enough support or is not willing to use the available support.

WHO CAN BE A GUARDIAN?

- A guardian can be a person, county agency, or institutional trust that is interested in the person’s welfare.
- For people living in state facilities, the state may choose the facility’s guardian office to serve as guardian of the estate.
- The court will consider the person’s choice of a guardian, if possible.



WHAT DOES A GUARDIAN DO?

- A guardian puts the person’s needs first when making medical and financial decisions.
- The guardian must consider three important things when making decisions. Those three things are autonomy, independence, and protection of rights.
 - **Autonomy** – The ability to choose how to live your life. Choices should be based on what the person would want if they were able to answer the question.
 - **Independence** – The ability to make your own choices instead of having others make them for you. The person should be able to live where they can make as many choices as possible, as long as doing so does not put them in danger.
 - **Protection** – Keeping the person safe from being taken advantage of or harmed.
- A guardian should make decisions based on what the person would choose if they were able to make the decision. Guardianship also means staying involved in the person’s life and making sure they have opportunities for enjoyable activities. It can include choosing and organizing caregivers, helping the person find and keep housing, and managing their finances.

