

RESPITE TIP



LEGAL GUARDIANSHIP

What is a legal guardian?

A legal guardian is someone appointed by the courts to be responsible for another person. The guardian makes all important decisions for the individual; for example decisions about health issues or financial questions. The guardian can be responsible for decisions about the care and well-being of an individual.

When is it necessary to have a legal guardian?

Legal guardianship is meant for adults with significant challenges such as intellectual disabilities, mental illnesses or other high needs which prevent them from making important decisions by themselves. Important decisions usually involve legal, medical or financial questions. Not all adults with disabilities need this type of support. It is very important to consider the individual and his or her abilities. Some persons with disabilities will be able to make fully informed decisions on their own. Some persons with disabilities may need help with certain decisions, and some may need a decision maker for most aspects of daily living.

When do I apply for legal guardianship?

In Nova Scotia, a person is seen as an adult by the legal system at 19 years of age, **regardless of their abilities**. If you are not the legal guardian when your child turns 19, you have no right to make any decisions for your adult child. You have no right to access medical or other information about your child without his or her permission. If your child has significant needs and is unable to make his or her own decisions, it is very important to arrange for legal guardianship before he or she turns 19.

How do I set up a guardianship?

A legal guardian is appointed by the court system. A guardian can be a relative, a friend or a trust company. If there is no family or friend to act as a guardian, and the court recognizes the individual as unable to make decisions for his or her self, they may appoint a government body such as the Public Trustee to take over guardianship.

You should contact a lawyer if you are applying for legal guardianship. The process will involve costs to you such as legal fees and court costs.

The process to be appointed as guardian involves two court applications. The first application is to the court asking for an official guardianship hearing. Documents must be filed with the application, including sworn affidavits from two medical professionals. The affidavits state that the adult is unable to look after his/her own affairs. The medical professionals chosen should be very familiar with the abilities of the adult – for example, the family doctor and a specialist in the field of the person’s disability. At the first hearing, a date is set for the second hearing. At that time, the decision about the guardianship will be made.

During the second hearing, if no one opposes the application, the judge will grant the request. If someone challenges the application, another hearing will be scheduled, and the doctors who signed the affidavits will be required to testify in court.

Once the application is granted, the court will ask for the applicant to post a bond. This is to ensure accountability around the finances of the person with the disability. The amount of the bond is chosen by the court, and will be based on the value of the income and property of the individual with a disability. It is possible to request that the bond be waived, but that decision is up to the judge.

For more information on legal guardianship, please see the following:

<http://m.morgan.coole.googlepages.com/legalguardianship-parti>

<http://m.morgan.coole.googlepages.com/legalguardianship...theprocess%5Bpartii%5D>

http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDMQFjAB&url=http%3A%2F%2Fwww.legalinfo.org%2Fdoc_download%2F236-guardianship-of-adults.html&ei=00pSVbGvEsT8yQSTtoCYAw&usg=AFQjCNHlk_AdQkhkjdTOwnqM6wDEzHV8IA&bvm=bv.92885102,d.aWw

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