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# A Guide to Guardianship



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What happens when my child turns 18?

After your child’s 18th birthday, you are no longer their legal guardian. According to the law, all persons 18 years and older are presumed competent. Legally, competency is defined by the ability to make decisions about health care, finances and other important areas of life. In health care, competency is determined by the ability to give “informed consent” for medical treatment. Informed consent is the ability to understand all the benefits and risks associated with medical treatment. If you feel that your child is unable to provide informed consent, you may wish to consider seeking guardianship after their 18th birthday in order to protect and assist your adult child when they receive medical care.

What is Guardianship?

Guardianship is legally granted to a parent or trusted adult by the court. It is a legal right to make decisions for another person who is “incapable” of making decisions for themselves that are in their own best interest. All persons are considered competent once they turn 18 years old. In medicine, competency is defined as the ability to give informed consent or the ability of the person to fully understand the care they are agreeing to receive. If your child turns 18 and you believe they still need assistance in making medical decisions, you or another trusted adult can be appointed as their legal guardian in order to protect them. Evaluations will need to be made by a physician and a psychologist to assess the competency of your adult child.

Who is eligible to become a legal guardian?

In the state of New York, any person over age 18 and a legal citizen of the US is an eligible guardian. The legal guardian of a minor is typically the minor’s parent but can also be a relative or a trusted adult. Someone with a criminal record may not be eligible to become a guardian.

The Process of Becoming a Guardian

Guardianship of a Minor

To become a guardian, you must:

- + File a court petition for guardianship.
- + Have your child evaluated by a licensed physician **and** a licensed psychologist regarding your child’s competency regarding medical decisions.

If it is deemed that your child is unable to provide informed consent for medical decisions, a hearing will be held where a legal guardian will be appointed.

Special Types of Guardianship

*Temporary Guardianship* is granted in emergency situations when a person is unable to make their own decisions. Temporary guardianship can be granted immediately and lasts up to 60 days in the state of New York.

*Standby Guardianship* grants a person temporary guardianship of a minor in the case that the parent cannot care for the minor. Typically, the parent is sick or has died.

You can find all the information needed for filing a petition at the NYSCEF website below:  
<http://www.nycourts.gov/courthelp//Guardianship/basics.shtml>

Glossary

**Developmental Disability:** An impairment that can limit one’s ability to give informed consent. This impairment arises in childhood and can be related to learning, language, behavior and/or physical development.

**Guardianship:** The legally granted right to make educational, financial and medical decisions for a child, an incapacitated adult, or a developmentally disabled adult.

**Guardian:** A person 18 or older who has the power to make educational, financial and medical decisions for a child, an incapacitated adult, or a developmentally disabled adult.

**Healthcare Proxy:** The person someone chooses to make health care decisions for them if they cannot make decisions for themselves.

**Incapacitated Adult:** A person over the age of 18 who is unable to make decisions for themselves.

**Informed Consent:** Permission granted with the complete understanding of the risk and benefits of the services that are being provided.

**Petition for Appointment of Guardian:** The paperwork required to become the guardian of a minor, incapacitated adult, or a developmentally disabled adult.

**Ward:** The person a guardian makes decisions for. Can be a minor, a developmentally disabled person or incapacitated adult.

