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# **GUARDIANSHIP WHEN THE DISABLED CHILD TURNS 18**

In Illinois, the law considers a “disabled person” to be a person 18 years or older, who because of mental retardation or mental illness, or physical incapacity or developmental disability, is unable to fully manage his or her own personal or financial affairs in a safe manner and is therefore in need of a guardian.

The court may appoint a “guardian of the person” or a “guardian of the estate” or appoint both, a “guardian of the person and estate.” A **guardian of the person** refers to the authority of the guardian to make decisions concerning the personal and physical care of the “disabled person,” including health care decisions and living arrangements. A **guardian of the estate** refers to the authority of the guardian to handle the money, property, bills and other financial affairs of the “disabled person.”

## **Frequently Asked Questions:**

### **Q. What Happens If I Don't Obtain Guardianship Over My Disabled Adult Son or Daughter ?**

- A. With respect to medical care, sometimes doctors and hospitals will accept the consent of the parents, but this does not always happen. With respect to living and social arrangements, if a "friend" or "stranger" persuades the disabled person to socialize or live with them, generally law enforcement will honor the desires of the disabled person if there has been no guardian of the person appointed. Without appointment of a guardian, all the parents can do is try to persuade their adult child to choose differently.

### **Q. If My Developmentally Disabled Adult Son Or Daughter Gives Me "Power Of Attorney," Will This Avoid The Need For Guardianship ?**

- A. No. Many parents have incorrectly been told to get "power of attorney" from their disabled child. In order for a power of attorney to be valid, the person granting or signing the power must have the legal capacity to consent and fully understand what he or she is doing, which generally does not exist for a person who is developmentally disabled. Even assuming that the developmentally disabled person is high functioning and has some capacity to consent, that person would also have the right to cancel or revoke the power at anytime in the future.

### **Q. If I Am Appointed Guardian, Will I Be Responsible To Pay The Disabled Person's Bills Out Of My Funds ?**

- A. No. You are not responsible to pay any debts from your own assets.

## **PROCEDURE FOR APPOINTMENT OF GUARDIANSHIP**

A Petition for Guardianship is filed in Court. The Petition is usually filed by the proposed guardian in the county where the disabled person lives. A doctor's statement about why a guardianship is necessary also should be filed at this time. The person filing the petition must send a notice of the time and place of the hearing to the disabled person by way of "Summons" and by way of "Notice" to his or her immediate relatives - parents and adult siblings. The purpose of the hearing is for the judge to decide whether the person is a "disabled person" under the law. If the judge makes a finding of disability, the judge will appoint a guardian of the person, the estate, or both. The judge will decide whether the guardian will have plenary (full) power, or will be authorized to handle only a limited range of matters.

### **"SAMPLE FORMS" FOR APPOINTMENT OF GUARDIANSHIP *can be viewed at [www.farley1.com](http://www.farley1.com)***

The "Petition For Guardianship" should be filed in the County where the disabled person resides. Every County has their own forms and own procedures.