



The Question of Guardianship

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Parents generally assume that they are the legal guardian for their children and therefore that they are responsible for their child's welfare, defending his or her rights, and making medical decisions for the child. This is quite true up until the child reaches the age of majority, which in New York, is 18-years of age.

Every person is regarded as a legal adult upon reaching the age of 18 whether or not there is a developmental disability. If a parent feels that his or her child cannot take responsibility for his or her personal, financial, life decisions or legal affairs, the parent or another responsible family member can apply to the Surrogate's Court in the county in which the child lives in New York state to become the child's legal guardian.

To become a guardian, the parent must file a petition with supporting documents with the County Surrogate's Court. Most parents use the services of an attorney to guide them through the guardianship process, although no attorney is required. Only the County Surrogate's Court can establish this type of guardianship. It cannot be accomplished by a will or any other means. There is a special process for the appointment of a guardian for a developmentally disabled person as compared to guardianship proceedings for non-developmentally disabled persons.

Why should a parent seek to be

named the legal guardian of his or her child? A person with developmental disabilities may face difficulty in obtaining medical treatment and/or social services or other services that should be available to him or her. An individual with developmental disabilities may become liable for financial obligations regardless of his or her ability or inability to pay them. The court appointed guardian is given the legal authority to make life decisions, manage personal and financial affairs and make legal decisions for his or her charge over the age of 18.

Who should become the guardian of my child? A parent, sibling, other family member or an interested third party may become the guardian. This is a very personal decision to be made by the family based upon the facts and circumstances faced by the individual with developmental disabilities.

What are the responsibilities of a guardian? In New York, the guardian acts very much as a parent of a child under the age of 18. The guardian ensures that the rights, interests and desires of the person with developmental disabilities are met and protected. The guardian also acts as an advocate for his or her charge. It is important to note, however, that the guardian should be appointed so that there is no period of time where the child is left unprotected. There is no minimum or maximum age for a petition for guardianship to be filed with the County Surrogate's Court.

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