

International 22q11.2 Foundation Inc.

Please be aware that guardianship proceedings vary by state and county. You should consult with an Attorney regarding the specifics of your guardianship. The below information is meant for educational purposes and is not legal advice.

1. What is a guardianship?

A guardianship or conservatorship (in some states) is often necessary in situations where an adult does not have valid powers of attorney and cannot effectively receive and evaluate information to make health care or financial decisions for themselves.

2. What do guardianship proceedings generally involve?

Most guardianship proceedings start with a guardianship petition being filed with the court. A guardian ad litem (court investigator or court visitor in some states) is then appointed on behalf of the proposed ward. This is usually an attorney whose role is to investigate whether guardianship is appropriate, speak to the parties involved, review medical records and other relevant documentation, and report back to the court what they believe to be in the best interest of the proposed ward.

A medical report may need to be submitted to the court indicating that a doctor or other health care professional believes the proposed ward to be incapable of making his or her own health care or financial decisions. In most cases, there is one hearing before a Court Commissioner or a Judge. Testimony is provided regarding the ward's capacity. At the end of the hearing, the court official will determine whether or not a guardianship is appropriate.

If there is an objection to the guardianship, some states will appoint counsel for the proposed ward. Generally, there is a second hearing held before a Judge. These can be more involved hearings where evidence is provided, witnesses are subpoenaed, etc. If at the end of the hearing the Judge finds a guardianship is necessary, he or she will issue an Order appointing the guardian. If not, the case may be dismissed and, in some states, the Petitioner is responsible for guardian ad litem's fees.

There are also certain timelines that must be met and parties to be noticed for the proceeding. It is important that you contact an attorney, the county or other organizations that may be able to assist you with the guardianship to make sure you meet all of these requirements.

You should also be aware that there are expenses associated with filing a guardianship. For example, some counties charge a fee in order to begin the proceedings and/or require a deposit to cover the guardian ad litem's fees.

Some states may require the proposed ward to appear at the hearing. This appearance can sometimes be waived by the guardian ad litem. If you believe that the proposed

ward would be at all harmed as a result of attendance at the court hearing, this is something you should discuss in great detail with your attorney, the guardian ad litem, and the proposed ward's attorney, if applicable.

3. When can a Petition for Permanent Guardianship be brought?

It is important to check with your state's law. In some states, a petition may be brought when an individual is aged 17 years and 9 months. This allows the guardianship to be in place at the time the individual turns age 18. All other guardianship actions may be brought at any time the petitioner believes an adult individual meets the requirements for guardianship.

4. Who can serve as Guardian?

A Guardian must be a person who is competent and over the age of 18. Generally, this is a family member or trusted friend. If there is no one else available to serve as guardian, a corporate or volunteer guardian may be appointed. If it is a guardianship over the person's finances, the guardian may need to be bondable.

5. Who is the ward?

The ward is the individual for who needs the guardianship. In the paperwork and before the hearing, the individual is referred to as the "proposed ward". After the court orders the guardianship, the individual is then referred to as the "ward". This term may vary by state.

6. What powers does a Guardian have?

The court order will indicate the guardian's specific powers. A guardian of the person will have authority to make certain decisions regarding his or her ward's placement, medical decisions, and vocational and social interactions. A guardian of the estate manages a person's money and assets per the court order. Any power not granted to the guardian cannot be exercised without a separate court order (for example, a guardian may not be able to sell the ward's real estate without court approval).

7. What should I do prior to contacting an attorney to file a guardianship?

You may wish to contact the probate court in your county of residence in order to determine their particular guardianship process. Some counties will allow you to proceed without hiring an attorney. Should you choose to use an attorney, the county may be able to provide you with a list of names of attorneys who practice guardianship in your area.

It would be best to determine who you will nominate as guardian, the rights you may want to have removed from the proposed ward, know the ward's financial situation, and have a doctor selected to complete the medical report. You should also consider your

financial situation, to make sure you have the assets to pay the court costs and attorney's fees, if applicable.

You may also want to look online for resources. The National Guardianship Association, Inc. and the National Guardianship Network both provide resources for individuals seeking guardianship. The National Guardianship Association, Inc. can be found at www.guardianship.org and the National Guardianship Network can be found at www.naela.org/NGN/.

Some states also have additional resources specifically focused on guardianship. In Wisconsin, for example, there is the Wisconsin Guardianship Support Center through the Greater Wisconsin Agency on Aging Resources, Inc. Their website is www.gwaar.org/wi-guardianship-support-center.html.

8. Can I be appointed guardian of the person and the estate?

The same person can be appointed as both guardian of the person and the estate. However, this may not always be possible as some states/counties require a guardian of the estate to be bonded. This means that the guardian must have appropriate credit in order to receive the bond equal to the amount of the ward's estate. When a family member is not found to be appropriate to be guardian of the estate, often a corporate guardian, such as Easter Seals, may take on that responsibility.

9. What happens after a guardian is appointed?

Generally, states require guardians of the persons to file reports on the condition of the ward with the court. The guardian of the estate will be required to file an inventory with the court, and an account of the ward's assets annually. Contact your county of residence to verify the specific responsibilities of the guardian of the person and guardian of the estate.

10. How does the guardianship terminate?

Generally, a guardianship terminates at the death of the ward. However, if the ward regains enough capacity to begin to make his or her own decisions, a guardianship can be terminated through court proceedings.

11. What happens if I am no longer able to act as guardian?

Depending on your state, you may be able to nominate yourself as the initial guardian and another individual or corporate guardian as the standby. This means that should you become incapacitated yourself or for any other reason be unable to act as guardian, the standby would be the next in line to take over that responsibility.

12. What if a ward is not able to live with me?

There are other proceedings, sometimes referred to as Protective Placement proceedings, that give the guardian authority to make decisions regarding living arrangements for their ward in certain residential settings. You should consult with your guardianship attorney regarding whether Protective Placement is appropriate in your situation.