

GUARDIANSHIP

Typical Proceedings and Powers

Following are some general characteristics of guardianship proceedings and powers. Because guardianship laws vary by state, these may not apply to your own circumstances.

- Typically, guardianship requires showing that the person lacks capacity to make certain decisions. In the case of medical/psychiatric treatment, lack of capacity requires that the person, due to his or her mental illness, is unable to refuse care or give informed consent. Informed consent can only be given when the individual understands the risks, benefits and alternatives to various treatment options.
- In some states, guardianship may be permitted if an individual's decision-making capacity is impaired to an extent that it makes him/her more vulnerable to self-neglect or victimization by others.
- Guardianships may extend to decisions involving the ward (the subject of the guardianship,) the ward's property or both.
- The extent of the guardianship depends on the laws of the state and the powers granted by the court in the guardianship document itself.
- Hospitals, medical providers and others may require you to provide proof of court appointment before divulging personal information about a ward. Carrying a copy of the court order is usually sufficient.

It is important to note that appointment of a guardianship may negate a ward's ability to seek voluntary treatment. In other words, if a court deems that the person lacks capacity to make treatment decisions, some states will not permit the person to self-admit for treatment because they are assumed to be incapable of making that decision.

The situation is further complicated if that state does not permit a guardian to sign the ward into the hospital. In these cases, the ward must meet involuntary hospitalization criteria in order to be hospitalized.

