

## Guardianships Unwrapped: Navigating the Maze of Legal Guardianship



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October 20, 2023 | **TRUSTS AND ESTATES**

From Britney Spears to Michael Oher, conservatorships have been a hot topic lately. There are many questions surrounding when a conservatorship or guardianship is appropriate and how that is determined. The words conservatorship and guardianship are often used interchangeably; however, each state defines them differently. In New York State, we do not have conservatorships, rather we utilize different types of guardianships to achieve the same results. Both conservatorships and guardianships are court proceedings that allow a judge to appoint someone to make certain financial, legal, medical and other everyday decisions for another person if the court determines that person is incapacitated and in need of a guardian. The court will use the least restrictive means possible, and generally, the guardian is only permitted to do what is written out in the court order.

In New York, you can have guardianship over someone's person and/or their property. Guardianship "of the person" allows a court-appointed guardian to make decisions regarding things like medical care, education, where a person should live, whether a person should drive a car or travel, and other decisions regarding the social environment of the incapacitated person's life. Guardianship "of the property" allows a court-appointed guardian to

make decisions regarding the finances and property management of the incapacitated person. It can allow a guardian to make gifts, create trusts, purchase stocks, sell a house, apply for government benefits, pay bills, and handle other legal and financial matters. Depending on the circumstances, these authorities may be limited or expanded.

In New York State, there are three different types of guardianship. An Article 17 guardian under the Surrogate's Court Procedures Act is a guardian (usually a parent or grandparent) who is appointed for a minor child. This often happens when a minor child will be receiving money or property from a settlement or inheritance. It may also happen when both parents have passed away and someone needs to act as the child's legal guardian to make decisions that their parent would normally make. This proceeding can be filed in surrogate's court or in family court depending on the circumstances.

Guardianship of an intellectually or developmentally disabled adult, also called an Article 17-A guardianship, is when someone is appointed to protect the interests of an intellectually and/or developmentally disabled adult who is unable to make certain decisions themselves. This is the most restrictive type of guardianship in New York State and will normally include most decisions that a parent would make for a child. This type of guardianship requires two medical affidavits confirming that the adult has a disability or traumatic brain injury and that because of that disability, they are unable to manage their affairs. This is a proceeding that is filed in surrogate's court and is governed by the Surrogate's Court Procedures Act.

The final type of guardianship in New York is an Article 81 guardian under the NY Mental Hygiene Law and is filed in supreme or county court. This is a guardianship that is often filed when someone has not done any advanced planning (health care proxy and power of attorney) and no longer have capacity due to certain medical conditions like Alzheimer's. During the guardianship proceeding, the judge will determine whether the person is incapacitated and in need of a guardian. The judge will make this determination if the person is unable to take care of their personal and/or property needs and they are likely to suffer harm because of this. If the judge has determined that the person is incapacitated, then they will appoint someone to act as the incapacitated person's guardian. This can be a family member or it can be a third party. Any proposed guardian must complete guardianship training and be approved by the court before they can act as a guardian.

The intricacies of guardianships can be quite complex, but understanding the key distinctions among the three discussed here is a critical step toward informed decision-making. From the nurturing care of Article 17 guardians, the tailored support of Article 17-A guardianships for individuals with developmental disabilities, to the comprehensive oversight of Article 81 guardians, each form of guardianship plays a vital role in protecting the interests and well-being of our loved ones. Whether it's managing financial affairs, personal care, or making healthcare decisions, these guardianships offer invaluable tools to provide a safety net for those who need it most.

It is essential to recognize the significance of seeking legal guidance to determine the most suitable form of guardianship for your specific situation. If you have questions pertaining to guardianship in New York State, please contact Lippes Mathias trusts & estates team members Jessica M. Peraza ([jperaza@lippes.com](mailto:jperaza@lippes.com)) or David E. Siegfeld ([dsiegfeld@lippes.com](mailto:dsiegfeld@lippes.com)) to learn more about how we can help.

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