

VERMONT GENERAL ASSEMBLY

The Vermont Statutes Online

Title 18 : Health

Chapter 215 : Guardianship Services For People With Developmental Disabilities

§ 9310. Powers of commissioner as guardian

(a) The court may appoint the commissioner guardian of the respondent if it determines that a guardian is needed to supervise and protect the respondent through the exercise of any or all of the following powers:

(1) The power to exercise general supervision over the respondent. This includes choosing or changing the residence, care, habilitation, education, and employment of the respondent and the power to approve or withhold approval of the sale or encumbrance of real property of the respondent;

(2) The power to approve or withhold approval of any contract, by or in the name of the respondent;

(3) The power to obtain legal advice and to commence or defend against judicial actions in the name of the respondent;

(4) The power to seek, obtain, and give consent to initiation and continuation of medical and dental treatment that best promotes the health, comfort, and well-being of the respondent, or to withhold consent for initiation or continuation of treatment which does not promote the health or well-being of the respondent. In exercising this power, the commissioner shall be guided by the wishes and preferences of the individual. Any decision to withhold or abate medical treatment for an irreversible or terminal condition shall be reviewed by the department's ethics committee. Nothing in this chapter shall be interpreted as giving the commissioner authority to consent to sterilization, lobotomy, involuntary administration of psychotropic medications, surgery of the brain for the purpose of modifying behavior, or electroconvulsive therapy for the respondent.

(b) Nothing in this chapter shall give the commissioner authority to place a person with developmental disabilities in a state hospital except pursuant to chapter 181 of this title.

(c) The commissioner shall exercise his or her supervisory authority over the respondent in a manner which is least restrictive of the person's personal freedom consistent with the respondent's need for supervision and protection. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

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Title 18 : Health

Chapter 215 : Guardianship Services For People With Developmental Disabilities

§ 9313. Duties of commissioner when providing guardianship services

(a) When providing guardianship services to a person with developmental disabilities, the commissioner shall maintain close contact with the person with developmental disabilities, no matter where the person is living in this state, and shall permit and encourage maximum self-reliance on the part of the person with developmental disabilities under his or her protection. The commissioner shall permit and encourage involvement by the person with developmental disabilities, and family members, and other individuals of the person's choice in planning and decision-making.

(b) In addition to the supervisory powers vested in the commissioner by the court pursuant to section 9310 of this title, the commissioner shall assist any person who is under guardianship to obtain those services to which the person is lawfully entitled and which the person needs in order to maximize opportunities for social and financial independence. Those services include, but are not limited to:

(1) Education services for a person with developmental disabilities who is of school age;

(2) Residential services for any person with developmental disabilities who lacks adequate or appropriate housing or residential supervision;

(3) Medical and dental services as needed;

(4) Therapeutic and habilitative services, adult education, vocational rehabilitation, or other appropriate programs or services for any person with developmental disabilities who is in need of such training or services;

(5) Counseling and social services;

(6) Counseling and assistance in the use of and handling of money. (Added 1977, No. 192 (Adj. Sess.), § 1; amended 2001, No. 43, § 1.)

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Title 14 : Decedents' Estates And Fiduciary Relations

Chapter 111 : Guardianship

Subchapter 012 : Persons In Need Of Guardianship

§ 3069. Powers of a guardian

(a) If the court enters judgment pursuant to subsection 3068(f) of this title, it may appoint a guardian if it determines that the respondent is unable to manage, without the supervision of a guardian, any or all aspects of his or her personal care and financial affairs.

(b) When the person under guardianship has an advance directive, the authority of the agent and the instructions contained therein shall remain in effect unless the probate division of the superior court expressly orders otherwise in a petition for review of the advance directive under 18 V.S.A. § 9718.

(c) The court shall grant powers to the guardian in the least restrictive manner appropriate to the circumstances of the respondent and consistent with any advance directive. Guardianship powers shall be ordered only to the extent required by the respondent's actual mental and adaptive limitations. The court shall specify which of the following powers the guardian shall have and may further restrict each power so as to preserve the respondent's authority to make decisions commensurate with respondent's ability to do so:

(1) the power to exercise general supervision over the person under guardianship. This includes care, habilitation, education, and employment of the person under guardianship and choosing or changing the residence, subject to the requirements of sections 2691, 3073, and 3074 of this title;

(2) the power to seek, obtain, and give or withhold consent to the initiation or continuation of medical or dental treatment, subject to the provisions of section 3075 of this title and any constitutional right of the person under guardianship to refuse treatment, provided that the court in its discretion may place limitations on the guardian's powers under this subdivision if appropriate under the circumstances, including requiring prior court approval for specific surgeries, procedures, or treatments;

(3) the power to exercise general financial supervision over the income and resources of the person under guardianship. This includes the power to seek or apply for, receive, invest, and expend all wages, compensation, insurance benefits, public benefits, and pensions for the benefit of the person under guardianship, to liquidate personal property for the benefit of the person under guardianship, to settle accounts, demands, claims, and actions by or against the person under guardianship, and to take any other action reasonably necessary to secure, preserve, protect, and defend the financial interests of the person under guardianship;

(4) the power to approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make;

(5) the power to approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to subchapter 6 of this chapter;

(6) the power to obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

(d)(1) When a guardian has been granted some but not all guardianship powers, the guardianship shall be identified as a "limited guardianship" and the guardian identified as a "limited guardian."

(2) A person for whom limited guardianship has been granted retains all the powers identified in subsection (c) of this section except those which have been specifically granted to the limited guardian.

(e) The guardian shall exercise supervisory powers in a manner which is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision.

(f) The guardian shall encourage the person under guardianship to participate in decisions, to act on his or her own behalf when practicable, and to develop or regain the capacity to manage his or her own personal affairs to the maximum extent possible. The wishes, values, beliefs, and preferences of the person under guardianship shall be respected to the greatest possible extent in the exercise of all guardianship powers. (Added 1979, No. 76, § 15; amended 2005, No. 198 (Adj. Sess.), § 12, eff. Sept. 1, 2006; 2007, No. 186 (Adj. Sess.), § 1; 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)

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Title 14 : Decedents' Estates And Fiduciary Relations

Chapter 111 : Guardianship

Subchapter 012 : Persons In Need Of Guardianship

§ 3071. Duties of guardian

(a) The guardian shall maintain close contact with the person under guardianship and encourage maximum self-reliance on the part of the person under guardianship.

(b) In addition to the powers vested in the guardian by the court pursuant to section 3069 of this title, the court may order the guardian to assure that the person under guardianship receives those benefits and services to which he or she is lawfully entitled and needs to maximize his or her opportunity for social and financial independence. Those benefits and services include, but are not limited to:

- (1) education services for a person under guardianship who is of school age;
- (2) residential services for a person under guardianship who lacks adequate housing;
- (3) nutrition services;
- (4) medical and dental services, including home health care;
- (5) therapeutic and habilitative services, adult education, vocational rehabilitation or other appropriate services.

(c) The guardian shall always serve the interests of the person under guardianship and shall bring any potential conflicts of interest to the attention of the court. (Added 1979, No. 76, § 15; amended 2007, No. 186 (Adj. Sess.), § 1.)