

Guardianship: Consider the Alternatives



Presented by

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Vermont Legal Aid, Inc. Disability Law Project**

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What is guardianship?



- Legal status of a person over 18 with cognitive impairment that significantly impairs decision making
- Guardianship is ordered by either Probate or Family Court following an evaluation of the person
- Court appoints guardian who then has decision making authority in some or all areas: General Supervision, Medical / Dental, Financial, Contracts, Property, Legal
- In Vermont guardianship is to be provided in the least restrictive manner possible with maximum input from the person under guardianship

What guardianship isn't:



- Guardianship does not include the powers of:
 - Magic
 - Force
 - Involuntary Medications
 - Involuntary Hospitalizations
 - Placements

Guardianship is a significant restriction of individual rights



- It takes away the legal right to make decisions about important areas of one's life.
- Guardianship can be stigmatizing.
- Once imposed, guardianship can be difficult to get out of.
- Guardianship should be considered only after all less restrictive alternatives have been considered.
- Probate court guardianship petitions must describe all “alternatives to guardianship that have been considered and an explanation as to why each alternative is unavailable or unsuitable.” 14 V.S.A. §3063(8)
- If there are no less restrictive alternatives, think about which decisions the person really needs help with and only ask for guardianship power in those areas.
- Consider a **voluntary** as opposed to an **involuntary** guardianship.
 - The person under guardianship can end the guardianship by writing to the court and asking that the guardianship be terminated.
 - If the guardian objects to terminating guardianship, the case is treated as an involuntary guardianship proceeding.

In Vermont, people under guardianship retain many of their rights



- The right to vote
- The right to visit with persons of their choosing
- The right to procreate
- The right to refuse treatment (services)

Why do people pursue guardianship over others?



- Intended to protect the individual
- Worried the person will make “bad” decisions
- Schools sometimes push parents to file

Why should guardianship be avoided if possible?



- Restriction of rights, disempowering for the individual
- Guardianship doesn't actually solve every problem

Does the average 18-year-old possess adequate decision-making capacity?



- Not really. But, they have had the opportunity to practice and make mistakes.
- Children with developmental disabilities are often not given opportunities to practice and make mistakes.

What is Supported Decision-Making?



- Supported Decision-Making (SDM) is an alternative to guardianship that allows an individual to make their own life choices with the help of a team.
- The SDM team is designated by the individual to be part of a support network that will assist them in making and communicating decisions about their life.

SDM is based on the common principles affirming that:



- Adults have a right to be their own primary decision maker.
- All people need help making decisions. We are all diverse, we all make decisions individually and with support, at different times in life.
- Good decision-making is a skill that can be learned.
- Decision-making skills are not “all or nothing.” People may have decision-making skills in some areas but need help in others.
- SDM should be available to all who choose to use it.
- Adults have a right to fail without serious injury or loss of rights.
- With effective use of SDM, guardianship should be a last resort.
- Relationships need to be valued, created, mentored and supported.

How do we create a Supported Decision-Making Agreement?



- Support and empower the individual to learn and practice the skills of decision-making from an early age and enrich social networks.
- The individual and team assess the person's abilities to make decisions in each area and identify where the individual needs assistance and who is best suited to provide assistance.
- Incorporate any appropriate measure such as those listed in the next slide.
- If helpful, create a written agreement that identifies how the supporters will assist.

What are additional alternatives to guardianship?



- Direct deposit, electronic payment, joint accounts
- Advance Directives
- Power of Attorney for Education, Financial, or Healthcare
- Representative Payee
- Trust
- ABLE Accounts
- Case management

Any of these can be incorporated in a SDM plan.

Resources:



- National Resource Center for Supported Decision-Making
<http://www.supporteddecisionmaking.org>
- Green Mountain Self-Advocates
<http://www.gmsavt.org>
- VT Legal Aid Disability Law Project
<https://www.vtlegalaid.org/disability-law-project>
- Office of Public Guardian
<https://ddsd.vermont.gov/programs/public-guardian>

Handouts



- How to Make a Supported Decision-Making Agreement
- Advance Directive Form
- Sample Supported Decision-Making for Education Agreement
- Sample Power of Attorney for Education
- Sample Consent and Release of Information for Education