

“What Is a Guardian ... and Do I Really Need One?”



Disability Rights New
Mexico

*Alternatives to
Guardianship*

What is a guardian?

A **guardian** is a person ordered by a judge to make decisions for another person. A court must decide that the other person (“the protected person”) is unable to make safe decisions for themselves. The protected person usually has a disability.

What does the guardian do for the protected person?

There are different kinds of guardians. For examples, some guardians make decisions about the protected person’s **healthcare**, and other guardians decide **where a person lives**. Often, guardians are appointed to make **all legal decisions** for the protected person. It depends upon what the judge thinks that the disabled person needs.

What does the guardian NOT do?

A guardian should only make the legal decisions for the protected person that are in the guardianship order. Guardians generally have no right to make other decisions. A protected person can still choose what to eat and drink, what to do with their time, who to be friends with, who they vote for, etc.

How does the judge decide who gets a guardian?

The judge listens to the opinions of people who know the person. The judge may listen to the person, their family members, doctors, therapists, teachers, friends, and others.

I have a disability. Do I automatically need a guardian?

No! Many people with disabilities live safely and happily without the help of a guardian. Everybody needs help making decisions from time to time. But just because you have a disability does not mean that you need a guardian to make decisions for you. You may not need a guardian at all to live safely and independently in your community.

If I do not get a guardian, what are some other ways that people can support me?

There are many alternatives to guardianship, some of which can be used together. Here are a few examples:

Representative Payee: If you receive Social Security benefits, you might consider having a “**rep payee**” to help manage your finances. A **rep payee** would pay your bills and make a budget to meet your needs.

Power of Attorney: A **power of attorney** is a legal document in which you assign someone to make choices for you *if* you need their help. This might be useful when you are sick or need help with financial decisions. You do not have to go to court to get a **power of attorney** in place. This means that most times you can end the **power of attorney** when you want to.

Advanced Directives: **Advanced Directives** are sometimes called a “living will.” In an **Advanced Directive**, you write out your preferences for future medical treatment if you get too sick to tell people what you want. For instance, an **Advanced Directive** might say that you do not like the side effects of a certain medication, so you do not want to take that medicine if you get sick.

Mental Health Advanced Directives: In addition to medical Advanced Directives, there are **Mental Health Advanced Directives**. If you have a disability that impacts your behaviors, **Mental Health Advance Directives** may be useful. They explain to others how you want to be treated, including what *is* helpful to you and what **is not**

helpful to you when your disability impacts your mental well-being. It lets people know in advance how to best help you when you are in a difficult space.

Joint Bank Accounts: A **joint bank account** is money that is managed by you and another person. You can pay bills, write checks, and use a debit card with a bank account. The person you choose to share a **joint bank account** would have access to the account to double-check how you manage your expenses.

Supported Decision Making Agreement: With a **Supported Decision Making Agreement (SDMA)**, you make a plan for the supports you need depending on your health and the decisions you are facing. You can get support from a case manager, friends, family, support staff, or others. And you can work together to clarify the supports you need and when you need them.

Remember: not everyone with a disability needs a guardian!



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