

# Navigating Guardianship Series Part 1: Definitions, Petitioning, And Preventative Measures

By Elizabeth Green

## Do you have aging parents? Do you have a child with developmental issues?

More clients and prospects are asking us questions about guardianship. With people living longer, have you thought about what could happen and what to do? Let's examine guardianship and how Altman & Associates can help through examples. The posts in this series will go into greater detail on the specifics of guardianships, such as what to expect in the petition process, the responsibilities of a guardian, and challenges and controversies.

## What is Guardianship?

Guardianship is a legal process through which a person ("guardian") is appointed to act on behalf of another individual ("ward"), either a minor or an adult incompetent to make sound decisions about their person or property.

There are three primary scenarios where guardianship might be needed:

- a minor whose parents are deceased. If both parents are dead and did not include a designated guardian in their will, a surviving relative must apply to the court to determine a guardian.
- an adult who has become mentally incompetent. This is the most common form of guardianship. If an adult did not execute a power of attorney before becoming incapable, a guardian is needed to help them manage their legal and medical needs.

In this example, Altman & Associates worked with a mental health services provider to obtain guardianship for one of their clients, a senior citizen with paranoid schizophrenia. Because of his mental illness, he could not properly care for himself. So, he needed a guardian to help him manage his personal and legal affairs.

A functioning adult with diminished capacity in some areas. This is commonly used to help parents of children with developmental disabilities, letting the parents continue to care for

the child's person and property after the child turns 18 and becomes a legal adult. Since the ward has regular capacity in most areas and can manage daily tasks independently, the guardian's powers here are more restricted and will be defined in the guardianship order.

In this example, Altman & Associates recently filed a petition for the parents of twins with learning and developmental disabilities. The petition was filed on their 18th birthday so the parents could continue to manage their under-competent children's affairs legally.

## Guardianship of Person versus Property

- A guardian is petitioned to be in charge of either person or property.
- A guardian of the person manages the ward's everyday needs, such as food, clothing, healthcare, housing, and social decisions.
- A property guardian is responsible for financial management, collecting income (e.g., rent, pension, Social Security), property management, paying taxes, and financial planning.
- Often, the guardian is responsible for both ("full guardianship"), but not always.

In this example, Altman & Associates assisted a client in obtaining guardianship for their adult disabled child. Because this child lived with her family and had no assets in her name, only guardianship of the person was needed in this case.

## Overview of the Petition Process

The person seeking the guardianship (the "petitioner") must file a petition with the Maryland circuit court in the jurisdiction where the prospective ward (the "alleged disabled person") resides. The petitioner must be an interested person as defined by Maryland law. The petition needs to include information about the petitioner, the alleged disabled person, and the prospective guardian (if not the same as the petitioner), as well as evidence detailing the

Annapolis, MD  
839 Bestgate Road,  
Suite 400  
Annapolis, MD 21401

Rockville, MD  
11300 Rockville Pike,  
Suite 708  
Rockville, MD 20852

Washington, D.C.  
Suite 500  
1050 Connecticut Ave NW,  
Washington, DC 20036

Northern VA  
8000 Towers Crescent Drive.  
13th Floor  
Vienna, VA 222182

alleged disabled person's disability and why the person cannot care for themselves.

After the petition is filed, the circuit court determines whether guardianship for the alleged disabled person is necessary. If the court determines that guardianship is the best course of action, it will identify the guardian and list the appointment's terms and conditions.

If the guardianship petition is contested, the matter will go to trial. Here, the petitioner and their attorney must present evidence showing the alleged disabled person's lack of capacity to make decisions and evidence supporting the prospective guardian's ability to serve.

### Preventative Measures

Obtaining guardianship requires complex legal procedures; getting court approval can take weeks or months. However, some steps can be taken in estate planning to set representatives of people and property in place and avoid any need to go

through the guardianship petition process.

- A durable power of attorney will enable another person to act on your behalf after showing incompetence. This is also a way to limit the future guardian's powers.
- An advanced medical directive or living will outline old age and end-of-life care preferences.
- An irrevocable trust passes assets held in the trust to predetermined beneficiaries and cannot be accessed by another party, such as a guardian.
- Disability insurance will replace any income lost to future incapacity.

Since 40 percent of people 65 or older have a disability, planning for possible future incompetence is an intelligent move. But where these measures still need to be started, guardianship can become necessary.

Call the attorneys at Altman & Associates at [301 468 3220](tel:3014683220) if you have questions or see the potential need for help on this legal matter.

Annapolis, MD  
839 Bestgate Road,  
Suite 400  
Annapolis, MD 21401

Rockville, MD  
11300 Rockville Pike,  
Suite 708  
Rockville, MD 20852

Washington, D.C.  
Suite 500  
1050 Connecticut Ave NW,  
Washington, DC 20036

Northern VA  
8000 Towers Crescent Drive.  
13th Floor  
Vienna, VA 222182

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Gary Altman, Esq. is the Estate Planning Partner of Altman & Associates, A Division of Frost Law serving MD, DC, VA, NY and FL. Gary can be reached at 301-468-3220 or via e-mail at [Gary.Altman@frostdtaxlaw.com](mailto:Gary.Altman@frostdtaxlaw.com).

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