



Is Guardianship Necessary

First, consider whether your brother or sister can make decisions on his/her own behalf. There will almost certainly be critical decisions regarding residential, medical, and financial issues during your sibling's lifetime. To help you decide how necessary it is for your sibling to have a guardian, take a moment to consider the following questions:

Financial: Can your brother or sister make change of a dollar? Does he/she understand basic banking transactions: Can he/she pay bills? Does he/she give money or other things away? Can he/she be easily exploited by merchants, landlords, etc.?

Medical: Does your brother or sister know what illness is? Can he/she decide when a doctor is needed? Can he/she follow directions concerning medications and understand what medical procedures entail, including the risks of operations?

Importantly: Does your brother or sister want a guardian?

Would guardianship assist your sibling in the management of his/her life?
A QUESTIONNAIRE
AVAILABLE AT AHRC CAN
HELP YOU WITH THIS
ISSUE

The Guardianship Procedure

There are two different statutes under which a person may apply to become the guardian of a mentally retarded or developmentally disabled person.

These are **Article 17-A** of the Surrogate Court Procedure Act, and **Article 81** of the Mental Hygiene Law.

Article 17-A is limited to guardianship over persons with mental retardation or specific developmental disabilities.

For a long time, Article 17A was the only alternative. Article 17A is an all or nothing kind of statute, which allows only total guardianship over the person or the person's property or both. When you are the guardian of the person, you have the legal authority to make decisions

regarding the ward's personal needs (ie... medical decisions, residential decisions, educational decisions). When you are the guardian of the property, you have the legal authority to make financial decisions on behalf of the ward. It is important to note that when you bring an Article 17-A petition, you have the opportunity to name standby guardian(s). Standby guardians take over when the primary guardian becomes incapacitated or has died. You can name an alternate standby to take over when the standby guardian becomes incapacitated or has died; a second alternate standby to take over after that one, a third alternate standby, and so on. You may also name an institutional guardian (a non-profit corporation) to take over at some point within the guardianship succession, but corporations can serve as guardian of the person only, not the property. Article 17-A proceedings are brought in the Surrogate's Court. The filing fee is \$15.00.

Remember: The function of a guardian is to make decisions on behalf of the disabled person -- decisions that the court has determined cannot be made by the person him/her self

Article-81 is available to anyone whose capacity is called into question, whether due to age or mental impairment.

Under **Article 81** of the Mental Hygiene Laws, a person may be appointed guardian for a specific purpose. The powers of the guardian would be specified in the order granting guardianship powers. These are tailored guardianships whereby a person is appointed guardian for only those particular needs where the proposed ward needs assistance. This proceeding is brought in Supreme Court. Filing fees are \$170.00.

A Note About Standby Guardians

1. If your parent is alive and is the Primary Guardian, you may be asked to be the Standby Guardian.

2. If the Primary Guardian becomes incapacitated and you are the Standby Guardian, you may need to bring an order in court to have the original guardianship terminated, and have yourself declared Primary Guardian.

3. When the Primary Guardian (usually a parent) passes away, the Standby Guardian has sixty days to file for Primary Guardian status. If this is not done, a new guardianship procedure must be initiated.

FAMILY SCENARIOS

Situations From The AHRC NY Sibling Meetings

AN OUT-OF-STATE CARETAKING SITUATION

Jane's brother Joe is doing well in his new supported work placement, and is being screened for a supportive apartment. He currently lives at home with his parents. Jane lives in another state, and does not anticipate returning to her hometown to live. While she applauds her brother's accomplishments, she knows that he will continue to rely on his parents for making important decisions, especially those related to chronic health issues. She worries about the day when her parents are no longer around, and wonders if guardianship would be a way for her to oversee and advocate for her brother.

Her parents should begin the guardianship process. One option would be to investigate standby guardianship status for Jane. Guardianship would allow Jane a say in medical and residential decisions for Joe.

A HOMECARE SITUATION FOR ELDERLY PARENTS

John's parents have provided the primary support to Mary, John's 40 year old multiply disabled sister. Mary has a pleasant life at home, but has rarely been cared for by anyone outside the immediate family. John's Mother has now developed some health problems which make things difficult. She will not tolerate discussion of changes in Mary's care, despite pressure from her husband. They did place Mary's name on a residential wait list years ago, "just in case" but have made it known

that they wish for Mary to live with their son, John. John's wife is totally opposed to this plan. John has heard that it is important to pursue legal guardianship, and wants to discuss this with his parents. How does he begin to broach this important topic?

Avoid delaying guardianship decisions until the crisis arrives. The guardianship process can take time, and there are expectations in this situation that are, perhaps, unrealistic. One good source of support to begin the process of planning the future would be a family lawyer, financial planner, or social service agency caseworker. Guardianship is not the only issue in this scenario and other issues need vetting.

FROM DEVELOPMENTAL CENTER TO GROUP HOME

Susan's 26-year-old sister Debbie was placed in a distant developmental center years ago due to her unmanageable behavior. The family has maintained contact with Debbie through regular visits. The state now intends to close the center and plans to move Debbie to a group home in a nearby town. Susan's widowed mother is upset at the change, but feels the state knows best. Susan thinks that Debbie should be placed in a residence closer to the family, so they can more easily monitor her care. She wonders what legal right she has to make the state comply with her wishes, and has heard that her mother is not her sister's legal guardian solely by being her parent.