

Purpose of Guardianships for Mentally Disabled Adults:

A person interested in the welfare of a mentally disabled person 18 years or older may petition the Court for the appointment of a guardian to promote the well-being of the individual and to protect against violations of human and civil rights. This is an involuntary guardianship, and the court must have sufficient evidence to conclude that the ward is mentally disabled and incapable of independently managing either his or her personal care or financial affairs or both. Guardianship is awarded only to the extent required by the individual's actual mental and adaptive limitations, so the Court may appoint a total guardian or a limited guardian. In either case, the guardian is to encourage the ward to build independence and self-reliance.

Powers of a Guardian for a Mentally Disabled Adult:

The Court may appoint a total guardian if it has been determined that the ward is unable to manage, without the supervision of a guardian, all aspects of personal care and financial affairs. A total guardian can supervise the ward through the exercise of the following powers, but in a manner which is least restrictive of the ward's personal freedom:

- general supervision, which includes choosing or changing the residence (*with Probate Court permission, if necessary*), care, education, employment;
- approval of a contract, except for necessities, which the ward wishes to make;
- approval of the ward's request to sell or encumber personal or real property;
- general supervision over the income and resources of the ward; consent to surgery or other medical procedures (*with Probate Court permission*) and subject to the constitutional right to refuse treatment. (Guardians cannot consent to sterilization of adults with mental retardation. Family Court handles these issues.)
- receive, sue for, and recover debts for the ward.

In an involuntary guardianship case, the Court can set up a limited guardianship if the ward is able to manage some aspects of personal care and financial affairs. The Court will specify the powers listed above that the limited guardian shall have, and may further restrict each power if the ward can assume the responsibility. The law establishes certain limits on a guardian's powers. For example a guardian may consent to non-emergency surgery or non-emergency admission to a nursing home only after specific Probate Court approval.

The Process for Creating a Guardianship for a Mentally Disabled Adult:

Although many guardianships are established without the involvement of an attorney, the assistance of an attorney can simplify such cases and avoid mistakes in the creation and accounting of guardianships.

The process begins with a petition or request to Probate Court. Usually, a relative or friend files a petition for appointment of a guardian for a person who is mentally disabled

and cannot manage either their personal or financial matters or both. The Petition requests that a guardian be appointed for a person who is referred to as the "proposed ward".

Please download a copy of the Petition for Guardianship of a Mentally Disabled Adult from the above link. Forms are also available in the Probate Court.

The Petition for Guardianship of a Mentally Disabled Adult requires that specific reasons and supporting facts as to why the guardianship is appropriate be reported along with the powers requested for the guardian. The Petition must be accompanied with the Statement of the Proposed Ward's Assets and Income ([Form 73](#)) and by the List of Interested Persons for a Guardianship ([Form 75](#)). Once the Petition and accompanying forms have been completed, they need to be filed with the Probate Court.

When a petition for guardianship is filed with Probate Court, the Probate Court follows the steps defined by the Vermont Rules of Probate Procedure. A hearing is scheduled, and notice is sent to the petitioner for service upon interested parties. They can all attend the hearing and give testimony about the guardianship if they chose.

The Court will order an evaluation of the proposed ward by a qualified mental health professional, to be completed within 30 days of filing of the petition. This evaluation is to describe the nature and degree of the proposed ward's disability, if any. This evaluation is confidential and is kept under seal by the Court.

Accompanying the evaluation are recommendations, identifying areas of personal care and financial matters in which the proposed ward:

- can manage without supervision or assistance;
- could manage with supervision or assistance of support services and benefits; or
- is unable to manage without the supervision of a guardian.

After taking evidence at the hearing and considering the confidential evaluation, the Probate Court Judge decides whether the proposed ward is mentally disabled and approves or disapproves the petition for guardianship. The powers and duties of the guardian are defined to meet the particular needs of the ward, including support services and benefits that the guardian should obtain for the ward.