



# KNOW YOUR RIGHTS

## Guardianship for Adults FAQ

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# Overview of Rights under Guardianship

## What is a guardian?

A guardian is an adult appointed by a court to make important decisions for you about your care and well-being.

## Who is a guardian appointed for?

The law says that if you are an adult (18 years or older), you can make your own decisions. But if a judge decides you are “**incapacitated**”, they can appoint a guardian for you.

## What does it mean to be “incapacitated”?

The law says you are incapacitated if you cannot make decisions to get health care, food, shelter, and other care needed. You are considered incapacitated if your difficulty with making decisions will probably lead to serious physical injury or illness.

## What authority does a guardian have?

The guardianship should be limited to meet your actual needs. A court may find that you are legally incapacitated in some areas, but not others. The court should give the guardian as little authority as possible. Restrictions on your decision-making should only be those that are needed.

You may also request a **limited guardianship**. A limited guardianship means a guardian can only make decisions about certain things.

**Example:** A judge can limit a guardianship to just help you manage your health care, and you still get to decide where you live.



## What are the limits of a legal guardianship?

Under guardianship, you keep all of your civil rights. However, the Judge can give specific rights to the guardian. Your civil rights include the following rights:

- » Access your records
- » Retain an attorney
- » Look for work
- » Vote

If your voting rights are restricted, please call the Disability Rights Oregon Voting Hotline at 888-339-VOTE (888-339-8683).

## Are there alternatives to guardianship?

Yes. Guardianship is an intrusive intervention that should be used only as a **last resort**. Alternatives to guardianship could include the following:

- » Supported decision-making
- » Advanced health care directive
- » Declaration for mental health treatment
- » Durable power of attorney
- » Special needs trust
- » Representative payee
- » Protective orders
- » Any other alternatives that help you stay independent



# What to Do if You Don't Think You Need a Guardian Appointed

## I received a guardianship petition and I don't think I need a guardian. What do I do next?

You can **object to the petition for guardianship and request a hearing** in front of a judge.

When you received your copy of the guardianship petition, you should have received a blue piece of paper with 3 boxes that you may check. You can use this sheet to tell the court:

- » Whether you object to guardianship in general
- » Whether you object to the specific person who is the proposed guardian
- » Whether you object to the extent of the guardian's ability to make decisions for you

Check off all of the boxes that apply and make sure that this form is received by the court.

If you don't have this form, you can also tell the following people that you object:

- » The “**court visitor**”
- » The probate court in the county where the petition is filed

## When do I have to object to a proposed guardianship?

There is a due date specified in the petition. You must file objections to a petition for guardianship **before that due date**. If you miss that deadline, the judge will probably order a guardianship. If you have a good reason for missing the due date, you can tell the court of this when you file your objection.

You can request to have a guardianship terminated at any time, but it may be harder if the guardian is already in place.

## I don't like the person who is trying to become my guardian. Can I suggest someone else?

Yes. You can object to the proposed guardian. It is helpful if you explain to the court or the court visitor why this person would not be a good guardian for you.

If the judge decides you need a guardian, they will need to appoint someone to serve as guardian. You can try to find someone else to be guardian that you think would do a better job. That person must be willing to serve as your guardian. They also need to petition the court to be your guardian.

## What can I bring to the hearing to support me?

You have the right to **present evidence** and to **call witnesses**. You can use your evidence and witnesses to explain any of the following:

- » Why you don't need a guardian
- » Why the person trying to be your guardian isn't the best person for you
- » Why the guardianship should be limited to only certain things



# How a Court Visitor and Guardian are Appointed

## Who is the court visitor?

After a petition for guardianship has been filed, the court will send an independent investigator to meet with you. This investigator is called a “**court visitor.**”

## What is the role of the court visitor?

The court visitor will try to find out if you need a guardian. If they think you need a guardian, the visitor may also identify what particular supports you may need. They will also determine whether the guardian is a suitable choice for you.

After meeting with you, the court visitor prepares a report. The court will consider this report when deciding the following things:

- » If you need a guardian
- » The scope of the guardianship
- » What supports the guardian should provide

## How should I work with the court visitor?

You should try to give the court visitor information about these things:

- » Your ability to make decisions for yourself
- » Your ability to gain support from others in making your own decisions
- » Your objection, wish to have a hearing and/or an attorney in the guardianship proceeding
- » Your feelings or concerns about the proposed guardian
- » Your names of people who you think would do a better job
- » Names and contact information of people who know you and can give the court visitor information on how you can make decisions for yourself



## Can I hire an attorney to help me at the hearing?

Yes. You may have to pay attorney's fees. You can try to find an attorney these ways:

- » You can contact Legal Aid in your county to request an attorney.
- » You may be able to get a referral to an attorney from the Oregon State Bar:

Oregon State Bar Lawyer Referral Service  
1-800-452-7636

## Do I have the right to a free, court-appointed attorney?

No. You have the right to be represented by an attorney, but the state does not have to pay for it. You can tell the court visitor you want an attorney. The court can appoint a free attorney for you, but the court does not have to.



# What a Guardian Should Do

## What powers and duties does a guardian have?

A guardian has only those powers given by the court. Guardians make decisions in three primary areas:

- » Where you live
- » What kind of health care you need
- » Other things you need to stay healthy and comfortable

A guardian's duties are to follow the court order that explains what decisions they can and cannot make. Guardians also have to file a yearly report with the court explaining how they have met their duties.

## What is a guardian's report?

Once a guardianship is established, a guardian must file a written report each year with the court. The guardian must give you a copy. In that report, the guardian must explain the reasons why the guardianship should or should not continue.

You have the right to object to this report by writing to the Court. If you have trouble writing your objection, you may contact the court to ask about objecting orally or by some other method.

## Are there things my guardian cannot do without court approval?

Yes, you keep all civil rights and ability to make decisions for yourself that you had before guardianship (unless they are specifically limited by court's order for guardianship). Here are some examples of things your guardian may not do without prior court approval:

- » Use your money to pay for rent for housing they provide.
- » Agree to have you sterilized. Sterilization means a medical procedure that stops you from getting pregnant or getting someone else pregnant, for the rest of your life.
- » Move your residence, unless the guardian gives 15 days' written notice to you and to the court. You must also be given the chance to object to the placement and have a hearing in front of a judge.

## What rights do I have?

When you have a guardian, you keep all of your civil rights, except any that have been specifically given to your guardian.

These rights include but are not limited to the following rights:

- » Meet with friends
- » Look for a job or work at a job
- » Pursue an educational path
- » Listen to music and watch television programs
- » Eat the food you choose
- » Register and vote privately and independently



# How to End a Guardianship

## How does a guardianship end?

Once a guardianship has been ordered, it lasts until your death unless the court decides to end or “terminate” the guardianship. You can take the following steps to try to terminate or modify a guardianship **at any time** after a guardianship has been set up:

- » You can write a letter and ask that the guardianship end. You must send the letter to the probate court in the county where your guardianship proceeding took place. You should describe the reasons why you are fully capable to make decisions and you no longer need the guardianship.
- » Include medical and other support that you can make decisions on your own, including supporting letters from your medical professionals.
- » You can request that a court visitor be appointed.
- » If your guardian disagrees, a hearing may be necessary.
- » You have the right to be present and to have an attorney with you at the hearing.
- » If possible, you should try to get an attorney to assist you.
- » If the guardian’s annual report includes information about why the guardianship should continue, and you think this information is wrong, you can write to the court or otherwise contact the court with the correct information.





**Disability Rights Oregon** upholds the civil rights of people with disabilities to live, work, and engage in the community. The nonprofit works to transform systems, policies, and practices to give more people the opportunity to reach their full potential. For 40 years, the organization has served as Oregon's Protection & Advocacy system.

This information is available in alternate formats, including large print, Braille, audio format, or electronic text file.

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Questions about  
registration or voting?

Voting Rights Hotline:  
888-339-VOTE (8683)

**DRO**

**Disability  
Rights  
Oregon**

Disability Rights Oregon  
511 SW 10th Ave Suite 200  
Portland OR 97205

800-452-1694  
[droregon.org](http://droregon.org)