

Sources of Information: The Arc of Indiana ([arcind.org](http://arcind.org)) and the Indiana Adult Guardianship Services Project (IAGS) ([iagsproject@yahoo.com](mailto:iagsproject@yahoo.com))

**FACT: Upon the 18<sup>th</sup> birthday, an individual with disabilities becomes an emancipated adult with all associated rights and responsibilities, unless guardianship or an alternative to guardianship is pursued and obtained.**

## WHAT IS LEGAL GUARDIANSHIP?

A legal proceeding where a court (judge) appoints someone (“guardian”) to make decisions on behalf of a person who has been determined by the court to be incapacitated (“protected person”).

There are several types of guardianship, as well as alternatives to guardianship. The Indiana State Guardianship Association and the National Guardianship Association agree that alternatives to guardianship, including “supported decision-making,” should be considered before beginning guardianship proceedings. **Alternatives to guardianship can typically be done at a lower cost than legal guardianship, which requires a court proceeding.**

*\*\*For more in-depth information about all options, contact The Arc of Indiana at 317-977-2375 and ask to speak to a Family Advocate. Ask for Ofelia if communication in Spanish is needed. \*\**

## WHAT ARE ALTERNATIVES TO GUARDIANSHIP FOR ADULTS WITH DISABILITIES?

### 1. Supported Decision-Making

Supported Decision Making is the newest alternative to guardianship. It is a formal written agreement in which the individual selects supporters to assist him/her to make decisions. It is a process of supporting or accommodating an adult with disabilities in the decision-making process to promote greater self-determination. Supported Decision Making Agreements can be as general or specific as the individual chooses and can cover a wide variety of topics, such as medical, financial, government benefits, and educational matters.

### 2. Health Care Representative

An individual may appoint a health care representative if there are concerns that at some time, the individual may lack the ability to make decisions regarding his/her health. Under Indiana law the health care representative can then make these decisions on the individual’s behalf. The appointment of a health care representative must be done when the individual is competent, and it can be withdrawn by the individual at any time, if he or she is competent to do so.

### 3. A Power of Attorney (POA)

A POA is a written notarized directive from one person who is competent to another individual that delegates the authority to make certain decisions for that person. Power of Attorney can be as general or specific as the individual chooses and can cover a wide variety of topics, such as medical, financial, government benefits, and educational matters.

The differences between Guardianship and Power of Attorney:

- A power of attorney is voluntary; a Guardianship can be voluntary or involuntary.
- A power of attorney is easily revoked; a Guardianship can only be terminated by court order.
- A power of attorney is made by someone who is competent; a Guardianship involves someone who is determined by a judge to be incompetent.
- A power of attorney is private and does not involve a court; a Guardianship involves court proceedings.
- The person designated “the attorney in fact” under a power of attorney agreement has less formal accountability than a Guardian.

## WHAT ARE THE DIFFERENT TYPES OF GUARDIANSHIP FOR A PERSON DETERMINED VIA COURT PROCEEDINGS TO BE INCAPACITATED?

### 1. **Limited Guardianship**

Limited guardianship allows the probate court to appoint someone as guardian over only the portion of a person's life where the person is both incompetent and has a need. Thus, there might be a limited guardian appointed for medical purposes only (i.e., to provide consent for medical procedures), or for placement purposes only, or for the limited purpose of approving behavior plans and/or psychotropic medications. *This is the least restrictive form of guardianship and should be utilized whenever possible.*

### 2. **Co-Guardianship**

2 or more people are appointed to act as guardian for someone at the same time. In other words, two people share the guardianship responsibilities.

3. **Guardian of the Person:** oversees the proper living condition and medical treatment for the protected person.

4. **Guardian of the Estate** oversees and manages the financial affairs and property of the protected person.

5. **Guardian of the Person & Estate ("Plenary Guardian")** is responsible to make all decisions on behalf of the protected person.

## WHAT IS THE PROCESS FOR BECOMING A GUARDIAN?

1. Retain an attorney to help with the paperwork and guide you through the process.
2. Have a thorough understanding of the protected person's health and finances.
3. If the person is incapacitated by health conditions, obtain a *Physician's Report* or letter from the person's physician verifying that he or she cannot manage finances or make other personal decisions.
4. File a *Petition for Guardianship* with a court with probate jurisdiction and notify the allegedly incapacitated person, all close family members, and any person or institution having care or custody of the allegedly incapacitated person during the 60 days preceding filing of guardianship petition.
5. Pay the filing fee.
6. If the allegedly incapacitated person consents to the petition or is unable to respond to inquiries due to disability, the court will hold a hearing at which witnesses will provide sworn testimony to support the allegations in the petition. If the evidence is deemed sufficient, the guardian will be appointed.
7. If a guardian is appointed, the judge will issue the guardian legal documents (often called "*letters of guardianship*") permitting the guardian to act on behalf of the legally incapacitated person. (IC 29-3-7-3). The guardian will be asked to show those documents routinely.

## TERMINATING OR RESIGNING GUARDIANSHIP

- A guardian may resign if he or she is unable to continue to serve. A motion requesting resignation will need to be filed with the court and the court will need to approve it. If guardianship is of the estate, an accounting will need to be done.
- Guardianship may be terminated when:
  - Protected person is no longer incapacitated; is moved to another state; or dies
  - A guardianship of the estate can be terminated when funds or property do not exceed \$3,500
  - Guardianship is no longer needed for some other reason
  - Guardian has not performed his/her duties in good faith or in the best interest of the protected person
  - Court terminates the guardianship



# Guardianship & Alternatives Fact Sheet

## POTENTIAL RESOURCES FOR FREE / REDUCED COST LEGAL RESOURCES

**1. Indiana Legal Services**

317-631-9410

<https://www.indianalegalservices.org>

**2. Indianapolis Legal Aid Society**

317-635-9538

<https://www.indylas.org>

**3. Neighborhood Christian Legal Clinic**

317-429-4131

[www.nclegalclinic.org](http://www.nclegalclinic.org)

[NOTE: This organization does not provide legal services for guardianships. It does provide legal services for POAs, Power of Attorney.]

## INCOME-BASED/LOW COST LEGAL SERVICES:

**Cox and Koons Law Firm [Modest Means]**

317-721-8044

<https://www.cox-koons.com>

## INFORMATION AND ADVICE FOR DOCUMENTED AND UNDOCUMENTED IMMIGRANT COMMUNITY MEMBERS

### *Local Indianapolis Community Centers*

Boner Community Center 2236 E 10th St, Indianapolis, IN 46201 (317) 633-8210	Shepherd Community Center 4107 E Washington St, Indianapolis, IN 46201 (317) 375-0203
Fletcher Place Community Center 1637 Prospect St, Indianapolis, IN 46203 (317) 636-3466	Christamore House Family & Community Center 502 N Tremont St Indianapolis, IN 46222 (317) 635-7211
Brightwood Community Center 2410 Station St, Indianapolis, IN 46218 (317) 546-8200	Mary Rigg Neighborhood Center 1920 W Morris St Indianapolis, IN 46221 (317) 639-6106
Hawthorne Community Center 2440 W Ohio St, Indianapolis, IN 46222 (317) 637-4312	Southeast Community Services 901 Shelby St, Indianapolis, IN 46203 (317) 236-7400