

# Adult Guardianship in Indiana: The Basics

## What is a guardian?

A guardian is a person or entity appointed by a court that is responsible for the care and supervision of a person and/or property of an incapacitated individual.<sup>1</sup>

Most commonly, an incapacitated individual (also called a “ward” or “protected person”) is someone who is unable to provide self-care or manage her or his property due to disability or illness.<sup>2</sup>

## What are the responsibilities of a guardian?

Unless limited by the court, a guardian is responsible for providing or supervising the protected person’s care; and ensuring their property, finances, and assets are properly preserved and managed. Guardians are also generally required to regularly inform the court on the status of these matters.<sup>3</sup>

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<sup>1</sup> Ind. Code § 29-3-1-6

<sup>2</sup> For a full list of conditions, see Ind. Code § 29-3-1-7.5(2),(3)

<sup>3</sup> Ind. Code § 29-3-8-1(a)(4); 29-3-9-6



## **What decisions are guardians allowed to make?**

Unless limited by the court, a guardian's authority may include, but is not limited to: the power to enter into contracts, the power to consent to medical care, the decision of where to live, how to manage finances, and whether to marry.<sup>4</sup>

## **Is it possible to limit guardianship?**

Yes. When in the best interests of the protected person, Indiana courts are required to limit the scope of the guardianship to encourage self-improvement, self-reliance, and independence.<sup>5</sup> The scope of a guardianship can be limited in time, degree of authority, and/or to certain areas of decision-making. The person petitioning for guardianship or the protected person can also request that the guardianship be limited.

## **Under guardianship, what rights are retained by the protected person?**

Unless explicitly stated by the court, adults under guardianship in the State of Indiana still have the right to:

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<sup>4</sup> Ind. Code § 29-3-8-2

<sup>5</sup> Ind. Code § 29-3-5-3(b).



- Vote
- Challenge or seek to end the guardianship
- Request the court to appoint a different guardian
- Visit with friends and family

## **How is a guardianship modified or terminated?**

A guardianship over an incapacitated adult typically remains in place for the life of the protected person. However, Indiana law requires the termination of such a guardianship when the protected person dies, or is determined by the court to no longer be incapacitated.<sup>6</sup> The court also has discretion to terminate a guardianship in some additional circumstances; notably when the guardianship is no longer necessary for any reason.<sup>7</sup>

In order for a guardianship to be terminated or otherwise modified, a petition must generally first be filed with the court requesting the termination or modification. Typically, the court will set a hearing so the parties can submit testimony and other evidence. The court will decide what action it believes to be appropriate. It should be noted that even if a guardian desires to resign from his or her duties, the court must first approve the resignation before it is effective.<sup>8</sup>

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<sup>6</sup> Ind. Code § 29-3-12-1

<sup>7</sup> *Id.*

<sup>8</sup> Ind. Code § 29-3-12-5



## **Are there alternatives to guardianship?<sup>9</sup>**

Yes. Often, appropriate and in some cases, legally-recognized supports can be used to address an individual's limitations without the need for guardianship. These supports include, but are not limited to:

- Informal supports
- Supported Decision-Making Agreements
- Authorizations to share information
- Team-based or shared decision-making
- Power of Attorney (POA)
- Healthcare Representative
- Educational Surrogate
- Living wills and advance directives
- Protective orders

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<sup>9</sup> For more information about alternatives to guardianship, read the *Alternatives to Guardianship Fact Sheet* and the *Supported Decision Making Fact Sheet*.



There is a spectrum of assistance with many options that may be considered instead of a plenary or

