

GUARDIANSHIP

NEEDED
OR NOT?

Did you know that when your child becomes 18 years old, regardless of type or severity of disability, he/she becomes emancipated? This means that your child is now legally an adult and presumed to be competent and responsible to make decisions without you, including educational, health, and financial decisions.

Guardianship is established to protect the person and/or the property of an individual over 18, who is found to be "incapacitated" according to the law. To request guardianship, you must hire an attorney who will file a petition to ask the court to appoint you (or another person) as a guardian. This can cost from a few hundred dollars to several thousand dollars. Legal Services Office may be able to assist you in establishing a guardianship if you cannot afford an attorney's fees. Check with the **BARTHOLOMEW AREA LEGAL AID, INC., 1971 State Street, Columbus, IN 47201 Phone: (812) 378-0358**

First determine the needs of your son or daughter, be knowledgeable about the different types of guardianship and alternatives, and then make a decision before your son or daughter is 18.

People with disabilities, including cognitive disabilities, are capable of making many of their own decisions and may need only a limited guardianship or power of attorney. However, if a person lacks sufficient understanding to make or communicate responsible personal decisions, a full guardian may be appointed. (Adapted from Pacer Newsletter—Fall 2004.) Whether or not a person needs a guardian must be determined by a judge in a court of law.

Types of Guardianship

Representative Payee: If the person's only income is SSI, SSDI, or other federal supplements, and only financial assistance is needed, a **representative payee** may be appointed.

Health Care Representative: A **health care representative** may be appointed by the person with the disability, to legally make decisions regarding the person's health care.

Power of Attorney: A legal agreement between the person with the disability and the person whom s/he chooses to make decisions only about specific things. This can be as broad or as narrow as needed to fit a person's needs. A **power of attorney** can be drawn up by anyone—books and software packages are available with forms and instructions or you may hire an attorney. A power of attorney must be witnessed and notarized. Setting up a **power of attorney** is less expensive than guardianship. A person must be competent to appoint a **power of attorney**.

Limited Guardianship: Guardianship is limited to specific types of decisions listed in the guardianship papers. Thus, the person with the disability maintains the right to make all other decisions.

Full Guardianship: The guardian is appointed to make decisions on behalf of the person with a disability. Among important duties, a guardian assists the person in choosing where he/she will live and what care and supervision is required. The guardian takes care of the person's finances and oversees and ensures proper medical care. Because the person is presumed incompetent, full guardianship takes away some of the person's rights—such as the right to marry or to obtain a driver's license or to enter into a legal contract. A guardian should include the person in decision-making as much as possible and make choices that are respectful of the person's wishes. Because full guardianship is restrictive, it should be entered into in a thoughtful manner and only when considered absolutely necessary.

Learn more online: National Guardianship Association at www.guardianship.org/guardianship.htm