

Guardianship

We can improve guardianship practice in Virginia



Guardianship aims to protect at-risk adults from harm, but at the same time removes fundamental rights. Guardianship can be both a safeguard against abuse, and a source of abuse.

Appointed by a Circuit Court, a guardian makes personal and health care decisions. A conservator makes money and property decisions. The same person may serve as both guardian and conservator, or it could be two different people. (In this brief, the term “guardianship” covers both.)

HOW TO PROTECT RIGHTS IN GUARDIANSHIP

- Because guardianship removes fundamental rights, consider less restrictive options such as health care advance directives, financial powers of attorney, and supported decision-making agreements.
- Consider requesting a limited order in which the court only removes selected rights and powers.
- Recognize that guardianship does not remove all rights. Basic rights that remain include for example to: be treated with respect; request review of the guardianship; have personal privacy; participate in decisions.

WHAT IF A GUARDIAN COMMITS ABUSE?

While most guardians are dedicated and caring, some may take advantage of their appointment. A guardian could exploit the adult’s funds, isolate the adult from family and friends, or neglect care.

If you encounter abuse by a guardian, call Adult Protective Services.

Who are the guardians?



Friends or family



Professionals such as attorneys



Human service agencies (public guardian program)

There are about 12,000 adults subject to guardianship in Virginia.



IMPROVING GUARDIANSHIP IN VIRGINIA

Training and education: Judges, guardians, guardians ad litem, and human services professionals should have training on guardianship and less restrictive options.

Court case management and database: The judicial system should have a statewide case management system and database to track cases, enabling local courts to respond to concerns.

Monitoring: Courts, local departments of social services, and local commissioners of accounts, and law enforcement should coordinate to best address problems and gaps.

Less restrictive options: Professionals and the public need heightened awareness of decision-making alternatives that could delay or prevent the need for guardianship.

From JLARC