

Article 17A Guardianships

What is an Article 17A Guardianship?

An Article 17A Guardianship is a legal proceeding in the Surrogate Court which designates a parent, relative, friend/advocate or organization to act on behalf of an adult with a developmental disability who is incapable of independently managing his or her own personal and/or financial affairs.

Why is this type of guardianship needed?

In NYS, everyone who turns 18 is considered to be legally competent to make decisions for themselves. If an individual has a developmental disability, they may not be able to competently make those decisions. This type of guardianship allows a parent to continue making decisions for their developmentally disabled child that they made prior to their child turning age 18.

Why is this necessary?

Many life decisions require an individual to give what is called "informed consent". For example, prior to performing a root canal, the dentist will ask for your consent. If an individual does not understand the long term effect of not taking care of their teeth, they may tell the dentist "No." If the individual is over the age of 18, the dentist must follow the individual's wishes. In addition, a "friend" may ask the individual to loan them some money. Some individuals with developmental disabilities may not consider the impact on their own finances and give the "friend" as much as they want often to the financial detriment of the developmentally disabled person.

When should you seek this type of guardianship?

Ideally, this should be setup before the individual turns 18. If the individual is 18 years or older, you can still bring this proceeding.

How do I start this proceeding?

You will need to file a petition in the Surrogate Court of the county where the person with the developmental disability lives. You will have to pay a small filing fee. You will also need to obtain certifications from a physician and a psychologist or two physicians. There are other documents that need to be submitted with your petition including consents from siblings, other relatives, as well as a background check on the proposed guardians. You can contact your county Surrogate Court and obtain the required petition and other documents from their office or go online to:

www.courts.state.ny.us/forms/surrogates/guardianship

How long will the guardianship last?

The guardianship will last for as long as the individual with the developmental disability lives or becomes able to competently make decisions for themselves.

What is Guardianship over the Person?

Guardianship over the Person, allows a guardian to make all daily decisions concerning the individual such as where the individual will live, who will provide personal care and assistance as well as medical decisions.

What is Guardianship over the Property?

Guardianship over the Property, allows the guardian to make decisions about the individual's property. The extent of the guardian's authority will depend on the individual's capacity and the extent of their property. If a guardian of the property is appointed, the assets of the developmentally disabled individual will be held jointly with the Clerk of the Surrogate Court and the guardian. Any withdrawals or liquidation of the individual's assets will require court approval first.

Is an Article 17A Guardianship the same as an Article 81 Guardianship?

Both types of guardianships are different in their own respect. Generally, Article 81 guardianships are used for the elderly who lack capacity. Under an Article 81 guardianship, the guardian's authority is limited by what is contained in the Order of Appointment. The procedures for obtaining an Article 81 guardianship are found under the NYS Mental Hygiene Law.

An Article 17A guardianship only authorizes a guardian for a person who is mentally retarded or has a developmental disability. The procedures for obtaining an Article 17A guardianship are found under the NYS Surrogate Court Procedure Act. In both guardianships, the guardian has a duty to look out for the best interest of the individual that they have been appointed as guardian for.