

# INTRODUCTION

**M**ary Jane has been an active person all of her life. She was a third grade teacher for many years and frequently directed school plays. Since her retirement nearly twenty years ago, she has been an active volunteer in local government and civic organizations, and a Sunday school teacher for her church. Though she never married or had children, she has a large circle of friends and frequently joins them for movies, plays and dinner.

Now Mary Jane is 83 years old, and her neighbors and friends have grown concerned about her. Her telephone and electricity recently were turned off, apparently because she failed to pay her bills. Mail piles up unopened on her kitchen table. Her usually immaculate appearance is now disheveled, and it is evident that she forgets to bathe. Her friends doubt that she is eating properly. She has been seen walking around the neighborhood in her bathrobe late at night, something she would never have done in the past.

What can or should Mary Jane's friends do? Whom can they call? Must a guardian be appointed to take care of Mary Jane? Who would that person be? Must it be a family member, or can her best friend help her? Are there any alternatives to guardianship that could help Mary Jane?

All of these questions come to mind when we face the fact that a loved one or someone we know cannot care for herself or make necessary decisions. This handbook is designed to help find the answers to these hard questions. It discusses the law of guardianship in Maryland, and describes when a guardian must be appointed to act for an incompetent person. Most importantly, this handbook lists many alternatives to a formal guardianship proceeding.

The handbook is arranged in a question and answer format. It provides sample forms, a section on where to get help, and a glossary of terms to make understanding guardianship and its alternatives easier.

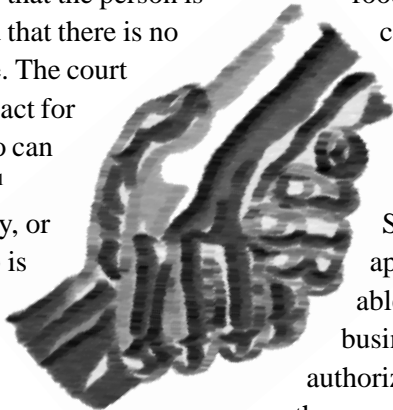
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CHAPTER 1

# GUARDIANSHIP

## WHAT IS ADULT GUARDIANSHIP?

Adult guardianship is a legal procedure in which a court determines that a person has severe disabilities which impair the person's ability to make decisions, that the person is in need of protection, and that there is no less restrictive alternative. The court appoints someone else to act for that person, someone who can make decisions about her<sup>1</sup> person, about her property, or about both. Guardianship is a way for the state, in the form of the court, to enter into the life of an adult to ensure that the person's basic needs are met, and that her property is protected and used for her benefit.



## WHY WOULD A PERSON NEED A GUARDIAN?

A person may need a guardian if she is not able to make every day decisions because of

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<sup>1</sup>The feminine pronouns “she” and “her” are used throughout this handbook in order to simplify the language. Both men and women are subject to guardianship, but because women are more often the subject of guardianship proceedings, the feminine pronoun is used.

the effects of a disease or other disabling condition. A person may become too mentally confused or forgetful to care for herself, or to make arrangements to meet her physical needs, such as providing food and shelter. This condition is called mental incompetency. *If there is no one else to step in and take charge, a **guardian of the person** may have to be appointed.*

Sometimes a guardian must be appointed because a person is not able to manage her own money or business affairs, and there is no one authorized to handle them for her. At times there may be a specific need for a legal signature, such as to sell property or to settle an insurance claim, and the person is not able to understand the matter. In this case a **guardian of the property** may have to be appointed.

## WHAT ARE THE DIFFERENT KINDS OF GUARDIANSHIP?

The court may appoint either a guardian of the person, a guardian of the property, or both. One person can serve as both guardian of the person and guardian of the property, or different people can take each role.

A guardian of the person makes decisions only about the person's medical care,



*Guardianship focuses on a person's ability to care for herself and manage her property.*

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residence, food, clothing, shelter, and other subjects which affect her person.

A guardian of the property makes decisions only about the person's money, income, property of any kind, stocks and bonds, and other financial matters.

### **DOES EVERY INCOMPETENT PERSON NEED A GUARDIAN?**

**N**o, not everyone who is mentally incompetent needs a guardian. There are many ways to handle the affairs of a disabled person without resorting to guardianship.

✓For example, there may be relatives and friends who can step in to take over the care of the disabled person without court intervention. The disabled person may have already planned for her incompetency by signing a durable power of attorney for her financial affairs. She may have executed an advance medical directive.

In Chapter 3 we discuss alternatives to guardianship in detail.

### **WHAT IS THE EFFECT OF A GUARDIANSHIP?**

The appointment of a guardian removes some or all of a person's ability to make decisions about her life. The court takes away the authority and power that the person had as an adult and gives it to the guardian. The guardian stands in the shoes of the person, and others look to the guard-

ian, not to the person, for personal or financial decisions.

If a court appoints a guardian of someone's *person*, the guardian, not the person, will make decisions about where the person is to live, what medical treatment she is to receive, whom her doctors should be, with whom she associates or where she travels.

If a court appoints a guardian of someone's *property*, the guardian, not the person, will make decisions about how, where or when to spend the person's money or how to administer her property. All control over the person's finances and property is given to the guardian. The guardian typically collects all money due to the person and from that money, pays her bills and buys her necessities. The guardian of the property can sell the person's real estate and other assets and invest the proceeds as the guardian sees fit.

### **WHY AVOID GUARDIANSHIP?**

There are several reasons to avoid guardianship.

One reason is that *guardianship is expensive*. The person requesting a guardianship, called the petitioner, must hire an attorney to draft the papers and file them in the court. Another attorney is appointed by the court for the alleged disabled person. The petitioner must pay a filing fee with the court, although this may be waived if the person is not able to pay. In addition, the guardian of the property may charge a yearly fee for handling the person's finances.

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Another reason to avoid guardianship is that it can be *time consuming*. The length of the process varies across the state, but it may take 2-6 months to appoint a guardian. This may be too long to resolve the immediate problem.

But the most important reason to avoid guardianship is that it is a legal measure which *deprives a person of control of her own life*. An adult under guardianship usually has no authority to make legally binding decisions. The guardianship order may be so broad that it deprives her of far more rights than are necessary to solve the problem at hand. Many people under guardianship have such limited understanding that this has no meaning for them, but for others, it can have a devastating effect, because they feel they have lost control over their lives.

The late United States Representative Claude Pepper, in considering the effects of the appointment of a guardian on the life of a disabled person (here called the ward), said this:

"The typical ward has fewer rights than the typical convicted felon—they no longer receive money or pay their bills. They cannot marry or divorce. By appointing a

guardian, the court entrusts to someone else the power to choose where they live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.<sup>2</sup>"

The law regarding guardianship of the person states that a guardian should be appointed only if there is no less restrictive alternative. Sometimes there *is* no alternative to guardianship. It may be the only way to protect someone who cannot protect herself. But it should be done as a last resort, after every other solution has been tried and has failed.



***Guardianship  
should be used as a  
last resort, when  
alternatives are not  
sufficient.***

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<sup>2</sup>*Abuses in Guardianship of the Elderly and Infirm: A National Disgrace*, H.R.641, Subcommittee on Health and Long-Term Care, House Special Committee on Aging, 100th Cong., 1st Sess. (Sept. 25, 1987) (Comm. Pub. 100-641).

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## CHAPTER 2

# COMPETENCY AND INCOMPETENCY

### WHAT IS INCOMPETENCY?

Mental **incompetency** is hard to define and even harder to identify. Generally, it means that a person has impaired or very limited ability to remember, to reason, to see the consequences of actions, and to plan for the future. In law, it means that the person is unable to make legally binding decisions. “Incapacity” is another word frequently used to indicate a person’s inability to make decisions for herself.

There is no bright line dividing those who are competent from those who are not. A person can be competent to make some decisions but not others.

- ✓ For example, a person may be able to express her opinion about whom she trusts to handle her money, but not be able to fill out an income tax form. She may be able to decide she wants a flu shot, but not to decide which treatment is best for her breast cancer.

The law presumes that all adults are competent until they are proven to be otherwise. Until a person has been found to be incompetent by a judge in a guardianship proceeding, or according to another law regarding competency, that person is assumed to be competent and has the right to make her own decisions.

### WHO DECIDES WHETHER A PERSON IS INCOMPETENT?

When a guardianship case is filed against a person, a judge will decide if that person is legally competent or incompetent. The judge must be persuaded by **clear and convincing evidence** that the person’s everyday decision making ability is severely impaired and that there is no other alternative to appointing a guardian. Clear and convincing evidence is a very high standard, higher than that used in a contract dispute or in a personal injury case. The judge will consider particularly whether the person can make informed decisions about personal care, food, shelter, and medical care, or about property, money and finances.

### WHAT ABOUT MENTAL DISORDERS?

A person’s mental illness or mental disorder does not automatically mean that the person is mentally incompetent. Many people who have mental illness can still make good decisions for themselves. Some people with mental retardation have the capacity to make decisions and to handle their own money.



*The law presumes that every adult is competent and is best able to pursue her own best interest, until she is proven otherwise.*



# HOW DO PHYSICIANS TEST FOR COMPETENCY?

**D**octors have several ways of testing for competency. They test both mental and physical functioning when they decide if someone is able to make competent decisions. Different procedures may be used depending on the source of the problem. For example, a person's competency may be questioned if the person has mental retardation, mental illness, severe head injuries, or a recent appearance of confusion or memory loss.

If a person begins to appear confused or to show signs of memory loss, she should have a complete physical and mental evaluation. For older persons, this is called a geriatric evaluation. During a geriatric evaluation, a team of specialists from different fields examines the patient and assesses his or her abilities and disabilities. They try to diagnose as accurately as possible the causes of the patient's confusion. They meet as a group to discuss the patient and recommend treatment options and future care.

## **History**

At the beginning of any examination for incompetency, the doctor will ask for a complete medical and life history of the patient in order to determine the person's level of functioning before the problem arose. The doctor will ask about medications the person is taking to assess whether drug interactions or improper dosing may be causing confusion. The doctor will observe and assess the person's overall appearance and behavior at this early stage.

## **Tests for Mental Capacity**

One way doctors test for mental capacity is through the use of a mental status examination. A commonly used test is the Mini-Mental Status Examination. The person may be asked to name the day of the week, name the place where they are, spell a word back-

wards, copy a complicated geometric design, remember three words for a few minutes, and repeat a common saying. The person's score is recorded on a 30 point scale. However, no score precisely determines mental competency.

The doctor may perform other tests, including a more in-depth neuropsychological examination, scales for depression, and tests of the person's functional ability to perform the activities of daily living, such as dressing, eating and bathing.

## **Tests for Physical Causes of Incompetency**

In addition to a mental examination, the assessment includes a thorough physical examination. Before a person is diagnosed as having a chronic, irreversible disease such as Alzheimer's disease, it is important to eliminate other possible physical causes of incompetency, such as vitamin deficiency or poor nutrition, depression, infections which can cause delirium, and drug interactions. The doctor will look for signs of dementing diseases, such as weight loss, problems with walking and falling, incontinence and bizarre behavior.

## **Laboratory Tests**

Laboratory tests may be done to help analyze the causes of the person's confusion.

Once the testing is complete, the doctor makes a medical judgment about the person's mental capacity. The doctor will use the results of the examinations and tests to fill out the certificates of incompetency that are filed in a guardianship case. The certificates may become part of the evidence in the case, or the doctor may be asked to testify in the case.



*Two doctors' certificates of incompetency must be filed with a guardianship petition.*

## POOR CHOICES

Using poor judgment or being eccentric does not mean a person is incompetent. To fit the legal definition, the inability to make reasonable decisions must be the result of a mental or physical disease or disability.



### HOW DOES THE LAW DEFINE INCOMPETENCY?

Incompetency is defined in two different ways in Maryland guardianship law. There is a definition of incompetency for each type of guardianship.

### WHAT PROOF OF INCOMPETENCY DOES THE GUARDIANSHIP LAW REQUIRE?

The guardianship law requires that two doctors' certificates be filed with the

## DEFINITION

In deciding whether a person needs a guardian of the *person*, the judge will ask whether the—

“person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.”

petition for guardianship. The certificates must verify that the person is unable to make or communicate responsible decisions about her person or property. They also must list the person's physical and mental diagnoses, the prognosis for recovery from these conditions and other details of the person's condition. At least one doctor must have examined the person within the 21 days before the petition is filed in court.

At a court hearing on the guardianship petition, the attorney for the alleged disabled person or the judge may require the doctor who signed the certificate to testify. Other physicians may be called to testify, along with anyone who has knowledge about the competency of the alleged disabled person.

### CAN A PERSON WHO IS QUESTIONABLY COMPETENT STILL MAKE DECISIONS?

Perhaps. A person who is in the early stages of a progressive disease like Alzheimer's disease, or one who has mental retardation, mental illness, or a head injury may well be competent enough to express her opinions about certain matters. Especially with Alzheimer's disease, which progresses differently in each patient, the person may retain some mental functions while losing others.

In deciding whether the person is competent to make a particular decision, one should ask—

- ◆ how complicated the decision is;
- ◆ whether it is consistent with the way the person has lived her past life; and
- ◆ how dangerous the consequences are.

✓For example, a person in the early stages of Alzheimer’s Disease, or one with mental retardation or a head injury, may be able to tell a lawyer that she wants her sister to handle her financial matters, and to execute a legally binding power of attorney.

When speaking to the person, the lawyer drafting the document should see her alone to insure she is not being influenced by anyone else. The lawyer should ask the person to explain what legal help she wants, to explain her reasons for her actions, and should ask the same questions over several visits to determine if the person is consistent in her answers. Some attorneys may want to have a doctor examine the person before asking her to sign the document, or to videotape the interview to show that the person did understand the consequences of her actions.

A person who is questionably competent may still be able to consent to or refuse medical treatment. When it is unclear whether an individual is making a rational decision, the doctor should ask whether the decision is in line with decisions the person has made in the past. The doctor may ask about the person’s known beliefs, values and patterns of behavior. For example, if the person is refusing to have an operation for cancer, the doctor should ask whether that person has a long standing dislike of medical treatment and whether she has refused to get treatment in the past. If the refusal of treatment is new behavior for the patient, it may be the result of dementia and not an informed decision.

In deciding whether to follow the directions of one who is questionably competent, one can also look at how serious a decision is being made. If the results of the decision are not clearly and directly linked to an immediate danger, then the person’s decision may be followed.

✓For example, a decision about whether to have a flu shot may be left up to a questionably competent person, while a decision about whether to have an emergency operation for appendicitis may not be.

#### **DOES AN INCOMPETENT PERSON ALWAYS NEED A GUARDIAN?**

No. As we will discuss in the next chapter and throughout this handbook, there are many ways to meet the needs of an incompetent person without filing for guardianship.



*The question is not whether the person is competent, but whether she is competent to make a specific decision.*

### **DEFINITION**

**I**n deciding whether a person needs a guardian of the *property*, the judge will ask whether—

“[t]he person is unable to manage his property and affairs effectively because of physical or mental disability, senility or other mental weakness, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance, and . . . [t]he person has or may be entitled to property or benefits which require proper management.”

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## CHAPTER 3

# ALTERNATIVES TO GUARDIANSHIP

Sometimes it is absolutely necessary to seek a guardian for a person who is incompetent. In those cases, guardianship is a welcome solution to a difficult problem.

In other cases, however, there may be alternative ways to solve the problem. These alternatives may not be the easiest course, or the least expensive, but they should be tried. This chapter discusses the reasons to search for alternatives and describes some solutions to common problems which prompt guardianship filings.

### WHY CONSIDER ALTERNATIVES TO GUARDIANSHIP?

- ◆First, the appointment of a guardian is a drastic measure. Guardianship will deprive a person of the right to make virtually all personal and financial decisions for herself. Some people are too disabled to understand the extent of this loss, and guardianship will have no practical effect on their lives. Others, however, will be humiliated and angry that control of their lives has been taken from them.
- ◆Second, the law requires that a guardian of the person be appointed *only if there is no less restrictive alternative*. This means that guardianship must be a last resort to solve a problem that person

faces. There must be no other answer except to appoint a guardian.

- ◆Third, filing for guardianship is costly and time consuming. Two attorneys, one representing the petitioner and one representing the alleged disabled person, must be paid. In some parts of Maryland, it will take several months for a guardian to be appointed. Once appointed, the guardian will have an obligation to file annual reports with the court. At the end of the guardianship, the guardian must return to court and file a petition to close the guardianship estate.
- ◆Fourth, a guardian of the person may have less authority to make decisions about life threatening medical treatment than does a close relative who is not a guardian. Unless the original court order specifically gives the guardian the authority to make decisions about life threatening treatment, a guardian will have to return to court for approval to withhold treatment when the person is close to death, for example. If the same person were only a close relative or friend, and not a guardian, she could make the same decision without court involvement, after consulting with the disabled person's doctors.



*Filing for guardianship can be costly, time consuming and complicated, so it is best to try other solutions first.*

For these reasons, one should think creatively to find ways to take care of the needs of the disabled person before filing for guardianship. If there is no other solution, then guardianship is appropriate.

### WHAT ARE ALTERNATIVES TO GUARDIANSHIP?

“Alternatives to guardianship” consist of a variety of legal tools, government benefit programs, social service programs, volunteer services, financial planning tools, and housing options which help the person with mental impairments solve problems relating to her person and property.

In searching for alternatives, start by identifying the exact problem or problems which have prompted the idea of filing for guardianship. From there, start to think about ways to solve the problem.

✓For example, perhaps the person can no longer safely live at home because she is careless with the stove. Perhaps she wanders at night. Perhaps she is living safely with relatives, but she needs an operation and she cannot understand the doctor’s explanation of it, and cannot give informed consent to the operation. Perhaps the doctor tells the family to file for guardianship because the patient

cannot remember to take her medication. Perhaps the person must enter a nursing home and someone must sign the nursing home admission contract or apply for Medical Assistance.


In none of these situations is it absolutely necessary for a guardian to be appointed. In the rest of this chapter, we will discuss different ways to address these and other problems.

### WHAT ARE ALTERNATIVES FOR A PERSON LIVING IN AN UNSAFE ENVIRONMENT?

If a family member or friend can convince the disabled person to voluntarily make a change, there is no need to file for guardianship. This is perhaps the easiest of the alternatives to guardianship.

✓For example, if the person living alone who is at risk to start a cooking fire will voluntarily leave her home and go live with relatives, there is no need to file for guardianship.

If the disabled person does not protest the change, or willingly accepts the services which someone arranges for her, the problem is solved. It is not necessary to have the court’s approval to make this change, unless the person protests or resists.



**PERSUASION**

If the person can be persuaded to accept services or to make a change which will protect her, there is no need to file for guardianship.



#### *Alternatives to guardianship:*

- *social services,*
- *housing options,*
- *benefit programs,*  
*and*
- *financial tools.*

It is possible to admit a person to a nursing home and to apply for Medical Assistance and other benefits on her behalf without being a guardian or even an agent under a power of attorney. The person may be moved to live with others or into one of the alternative housing options outlined below without a guardian's approval.

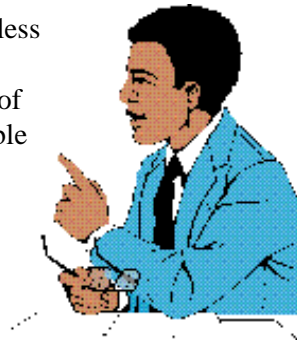
medical treatment for a person who cannot understand or consent to the treatment herself.

If a person is mentally incompetent and cannot understand the doctor's explanation, the doctor must obtain informed consent from someone else. That person may be a guardian, but there is another alternative for consenting to medical treatment.

## INFORMED CONSENT

**D**octors and other health professionals must have a patient's informed consent before giving medical treatment. Informed consent means that before a physician can treat a patient:

1. The doctor must explain the pros and cons and the alternatives to the treatment.
2. The patient must agree to be treated, unless the situation is an emergency.
3. The patient must understand the nature of the treatment, the dangers and the possible side effects.
4. The patient must give consent freely, without pressure to do so.



The **Maryland Health Care Decisions Act**, passed in 1993, provides two ways that someone else can consent to medical treatment for an incompetent person:

### ◆ **Advance Directive**

When she was competent, the person could have written and signed, or orally dictated, an **advance directive** for medical care. An advance directive may appoint someone else to make decisions in the event that she becomes unable to do so. The advance directive is sometimes called a **living will** or a **health care power of attorney**. The person making an advance directive must be mentally competent to make one.

## WHAT IF THE PERSON CANNOT CONSENT TO NEEDED MEDICAL CARE?

One of the most common reasons that people file for guardianship is to authorize

### ◆ **Surrogate Decision Making**

If the person did not appoint a health care agent, a surrogate decision maker can consent to her medical care. A **surrogate** is a substitute, or a proxy,

who acts for the person. The Health Care Decisions Act sets out the circumstances under which someone else can make medical decisions for a person who is unable to understand the issues.

Either of these methods would allow someone else to make a medical decision for an incompetent person without having to file for guardianship. The two are described in more detail below.

#### a. Advance Directives

An advance directive is a document in which a person states her wishes about future health care. The advance directive may

- ◆ appoint another person to make decisions for the person,
- ◆ state what type of care the person would want in certain situations, or
- ◆ do both.

It may be made in writing or orally. A form Advance Directive is at Appendix A.

**Appointment of health care agent:** The person making the advance directive, who is called the **principal**, can appoint a person, called the **agent**, to make health care decisions for her. Unless the advance directive states otherwise, the agent's power becomes effective when the attending physician and a second physician certify in writing that the person is unable to make an informed decision. (If the person is uncon-

scious or unable to communicate, a second certificate is not necessary.)

Once the document takes effect, the agent has primary authority to make decisions about the person's care. The agent must base his or her decisions on what the patient would have wanted in the situation.

**Health care instructions:** The person may also state in an advance directive exactly what

care she would want in a given situation. Usually the person says whether she would want life sustaining treatment, such as a respirator or tube feeding if she is near death or if there is no hope of her recovery.

#### Oral Directives:

Under certain circumstances, a person can orally appoint a health care agent and give instructions regarding treatment. To make an oral advance directive,

- ◆ the person must be mentally competent (See Chapter 2);
- ◆ the person must give the instructions in the presence of the attending doctor and one witness; and

### ADVANCE DIRECTIVES

A person must be mentally competent to make an advance directive.

- ◆ the doctor must write the person's instructions or statement in her medical record. Then the doctor and the witness must date and sign the notation.

### **b. Surrogate Decision Making**

If a person does not have an advance directive, and is unable to consent to treatment, a **surrogate decision maker** can make health care decisions for her. A surrogate is a substitute or a proxy, a person who makes a decision for the incompetent person, based on what that person would have wanted. If a surrogate decision maker can be found, it may not be necessary to appoint a guardian of the person.

**Surrogate decision makers:** The law allows these individuals to be surrogate decision makers, in the following order of priority:

- ◆ a guardian previously appointed by the court;
- ◆ a spouse;
- ◆ an adult child;
- ◆ a parent;
- ◆ an adult brother or sister; or
- ◆ a close friend or relative.

A surrogate from the last category (relative or close friend), must sign a statement confirming that the patient's wishes are well known to the surrogate. In the statement, the surrogate should state that he or she is a relative or close friend of the patient, and give specific information showing that the surrogate is familiar with the patient's activities, health and personal beliefs. The statement should include such facts as how long he or she has known the

patient, how frequently they had contact, and what he or she knows about the patient's beliefs and wishes. The statement is given to the doctor and is placed in the person's medical record. A sample statement for a surrogate in this category is at Appendix B.

**Surrogates vs. Guardians:** A surrogate acting under the Health Care Decisions Act may have *more* authority than a guardian to make serious medical decisions.

## **SURROGATES**

**I**f there is a surrogate to make medical decisions, there may be no need for a guardian of the person.

The guardianship law states that a guardian must get the court's approval of a medical decision which poses a risk to the life of the person, except under two conditions. If the court is appointing a spouse, a parent, an adult child, or an adult brother or sister as guardian, the court may state in the initial guardianship order that the guardian can make decisions about life threatening treatment without the court's permission. Or if the person has appointed the guardian as an agent in an advance directive, the guardian does not have to seek the court's permission to make such a decision. Any other guardian, however, will have to get the court's approval before making a decision about life threatening care.



*A surrogate is an agent or a substitute. A surrogate can make a medical decision for someone else.*

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On the other hand, a surrogate decision maker who is *not* a guardian, does not have to ask the court's permission before making such a decision. The surrogate only will have to consult with the person's doctors, and make a decision based on what he or she knows the person would have wanted (see next section).

It is simpler for a person to act as a surrogate than as a guardian when making end of life decisions for another. This is another reason to carefully consider whether guardianship of the person is absolutely necessary.

**Standards for Surrogates:** Surrogate decision makers must follow certain guidelines. The surrogate's decisions must be guided by what the person would have wanted, unless the person's wishes are unknown or unclear. In deciding what the person would have wanted, the surrogate should consider the following factors:

- ◆ the person's current diagnosis and prognosis;
- ◆ the person's expressed preference regarding the treatment at issue;
- ◆ the person's relevant religious or personal beliefs;
- ◆ the person's behavior and attitude toward medical treatment;
- ◆ the person's attitude toward a similar treatment for another individual; and
- ◆ the person's expressed concerns about the effects of her illness and treatment on family or friends.

Sometimes the person's wishes are totally unknown or unclear, as in the case of someone who has had profound mental retardation all of her life, or in the case of a person who is unconscious and unidentified when brought to the hospital. A surrogate must then decide based on the person's **best interest**. "Best interest" means that the benefits of treating or not treating the person outweigh the burdens of doing so. In deciding what is in the best interest of the person, the surrogate must consider:

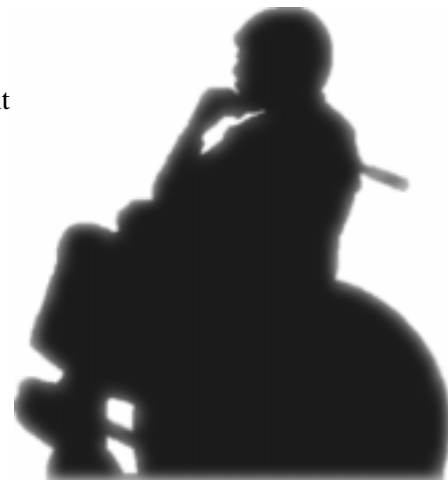
- ◆ the effects of the treatment on the physical, emotional and mental functions of the person;
- ◆ the physical pain that the person would suffer from the treatment or from the withholding or withdrawal of the treatment;
- ◆ the humiliation, loss of dignity, and dependency the person is suffering as a result of the condition or as a result of the treatment;



*A surrogate's decision should be based on what the person would have wanted.*

## WHAT WOULD YOU WANT?

Since so much depends on what kind of care the patient would want, everyone should express their wishes about medical care to those close to them. This is especially important for older persons and those diagnosed with the early stages of serious diseases, such as Alzheimer's disease.





*If surrogates disagree, guardianship may be necessary.*

- ◆ the effect the treatment would have on the life expectancy of the person;
- ◆ the person's potential for recovery, with the treatment and without the treatment;
- ◆ the risks, side effects and benefits of the treatment; and
- ◆ the religious beliefs and basic values of the person.

**Disputes among surrogates:** In many cases, more than one individual may qualify as a surrogate decision maker with equal decision making authority.

- ✓ For example, suppose the person has a son and a daughter. Both children have equal status as surrogate decision makers, yet they may have conflicting ideas about their parent's care.

If surrogates disagree about a person's health care, and the person is in a hospital or a nursing home, the doctor must refer the case to the **patient care advisory committee** to try to resolve it. Each hospital and nursing home in Maryland must have one of these committees, made up of staff from the institution, people from the community, and clergy. The patient care advisory committee will investigate, negotiate, and advise the surrogates and the doctors. If there is still disagreement, guardianship may be the only answer. Any of the parties can file to be named guardian so that necessary medical decisions can be made. It may be possible to file for emergency guardianship in order to make decisions quickly. (See Chapter 7.)

If the person is not in a hospital or a nursing home, and surrogates of equal priority disagree about withholding or withdrawing life sustaining procedures, the doctor may not withhold or withdraw treatment without a court order. In this case also, someone may have to file quickly for guardianship in order to make a medical decision.

## LIMITATIONS ON SURROGATES

**A** surrogate *may not* authorize treatment:

- ◆ when the patient, even if incompetent, is actively refusing treatment. When the patient is refusing treatment, it is necessary to ask that a guardian be appointed in order to consent to treatment. (For example, this sometimes happens when those with mental retardation refuse to allow a dentist to work on their teeth.)
- ◆ when the treatment is sterilization, or treatment for a mental disorder.



## WHAT IF THE PERSON CANNOT LIVE ALONE IN THE COMMUNITY?

Many public and private services provide the help an incompetent person needs to stay in her home and community. It is not necessary for the person to have a guardian in order to take advantage of these. Someone else can investigate and apply for these services for the person. Not all services are available in all communities, and some may have long waiting lists. Some charge a full fee, others have a sliding fee scale, and some are covered by Medicare or Medical Assistance. Some are geared toward one group or another, such as the elderly, or those with physical disabilities.

Some of these services are listed below:

### Case Management

The local Department of Social Services, the area agency on aging, the Department of Health and Mental Hygiene, and private organizations provide case management services to the elderly and those with disabilities. A case manager assesses the individual's needs and coordinates services to the person so that she can remain at her

highest possible level of self-sufficiency. This service may be provided free, on a sliding scale, or for a fee.

To find out about case management services, call the number listed in Chapter 8

for the area agency on aging, the Department of Health and Mental Hygiene, or the Department of Social Services in your county. Call Geriatric Care Managers for referral to private case management services, at (520) 881-8008.

### Home Health Services

Numerous home health care services are available for seniors and persons with disabilities. They may be delivered on a monthly, weekly or daily basis. Home and community based services may be cheaper than care in a

nursing home. Medicare, Medical Assistance, or private insurance may pay for some or all of the costs for medical services. Other funding may be available for services such as shopping and house cleaning. Listed below are some of the types of help provided:

- ◆ Home health aides and skilled nurses oversee the person's care, administer medication, assist with wound dressing



### WHO TO CALL

To find out exactly what community services are offered in your area, call the local Department of Social Services, the area agency on aging, the Maryland Office on Aging or the Maryland Department of Health and Mental Hygiene. See the listings in Chapter 8 to find the appropriate number. You can also call the Eldercare Locator, at (800) 677-1116, which will identify services elsewhere in the country.



### Case management includes:

1. A complete assessment of a person's needs.
2. Coordination of services to meet those needs.



*Alternatives to guardianship seek to protect a person from harm without intruding excessively on her autonomy.*

and catheter care, and help with washing, dressing, feeding and exercising.

- ◆ Nutritionists help plan diets for patients with special needs.
- ◆ Therapists provide physical, occupational, speech and respiratory therapy.
- ◆ Homemaker and chore service workers help with shopping, meal preparation, cleaning, household management, and transportation to the doctor, pharmacy, or shopping center.

To find out about home health care services, call the number listed in Chapter 8 for the area agency on aging, the Department of Social Services in your county, or the Department of Health and Mental Hygiene.

### **Senior Care**

Senior Care is a statewide system which coordinates community based services to individuals according to individual needs. The person must be 65 or over, at risk of entering a nursing home or institution, and have a limited income. The program provides a comprehensive assessment of the individual's needs and a case manager to secure and coordinate services. Additionally, the program has a pool of money for necessary services, durable medical supplies, or equipment which is not available through traditional resources.

To find out about Senior Care, call the number listed in Chapter 8 for the area agency on aging or the Department of Social Services in your county.

### **Adult Day Care**

Adult day care centers provide the elderly or persons with disabilities a safe place to stay during the day, companionship, limited health care, and activities. Some provide transportation to and from the day care center. Many have special care programs for those with Alzheimer's Disease. Some costs may be covered by Medical Assistance.

To find out about adult day care in your area, call the number listed in Chapter 8 for the area agency on aging or the Department of Social Services in your county.

### **Respite Care Programs**

Respite care programs provide funding to pay a trained person to stay for short periods with a person with disabilities in order to give the family care giver time off from the stressful job of being a care giver. Medical Assistance may pay for a short stay in a nursing home for respite care as well.



To find out about respite care programs, call the number listed in Chapter 8 for the area agency on aging or the Department of Social Services in your county.

### **Meals on Wheels**

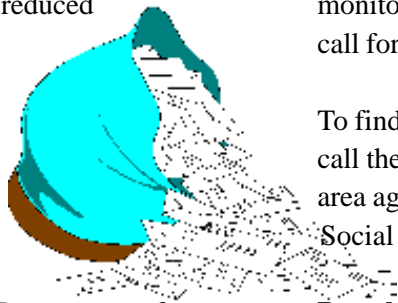
This volunteer agency delivers free or reduced price meals to those who are homebound and unable to cook for themselves. This service is especially useful to those who cannot use the stove safely.

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To find out about Meals on Wheels, call the number listed in Chapter 8 for the area agency on aging or the Department of Social Services in your county, or look in the telephone book for "Meals on Wheels."

### **Transportation to Medical and Other Appointments**

Rides to medical appointments and shopping are often difficult to arrange for someone who has disabilities. Many counties have a free or reduced price van service. Others provide reduced price taxi vouchers.



To find out about transportation services, call the number listed in Chapter 8 for the area agency on aging or the Department of Social Services in your county.

### **Food and Prescription Drug Deliveries**

Deliveries of groceries and prescription drugs to the home of the patient can often be arranged with local stores and pharmacies. Call several to find the ones that deliver.

### **Telephone Reassurance Programs**

Volunteers make daily calls to those who have disabilities or are homebound to make sure they are well and safe. This service may be part of a larger package of services to the person with disabilities.



To find out if a telephone reassurance program is available, call the number listed in Chapter 8 for the area agency on aging or the Department of Social Services in your county.

### **Home Visitors and Pets on Wheels**

Volunteers or volunteers with their pets visit those in nursing homes or those who cannot leave their homes to provide companionship and much needed stimulation. For those who live alone, these volunteers can also monitor how the person is faring and can call for help if it is needed.

To find out if these programs are available, call the number listed in Chapter 8 for the area agency on aging or the Department of Social Services in your county.

### **Postal Service Checks**

The U.S. Postal Service will arrange to have a letter carrier check on a person periodically when delivering mail. Call your local Post Office to find out if this service is available.

### **Unpaid Utility Bills**

Some Maryland utility companies will notify a third party if a person does not pay her utility bill. This acts as a check on someone who forgets or who is not physically able to write her monthly checks. Call the power or telephone company in your area to find out about this service.



*Home and community based services help a person "age in place."*

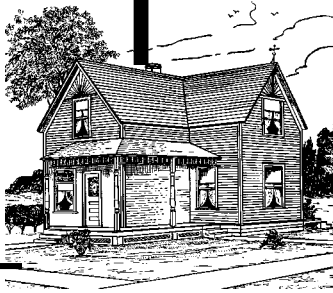
## WHAT IF THE PERSON NEEDS SUPERVISION?

### Housing Options

Sometimes a new and supportive housing arrangement can take care of problems such as a person's unsafe cooking habits or

### ALTERNATIVE HOUSING

If a person will move to supportive housing willingly, there may be no need to file for guardianship to keep her safe.



wandering outside at night. Alternative housing options provide varying degrees of assistance. Some simply provide housing plus one or two meals a day; others provide full care for all the activities of daily living. They range widely in cost. There may be some public funds available to help pay for them.

These housing options can help a person maintain her independence as long as possible and provide a more homelike setting than does a nursing home.

### Assisted Living Facilities

Assisted living facilities generally provide help with bathing, dressing, meals and house-

keeping. They are for those who cannot live alone, but who do not need the level of nursing care provided by a nursing home. Most are rental units. Residents live in a private or semi-private room. The staff provides three meals a day, and help with activities of daily living, depending on the person's individual needs. There are a number of assisted living programs which provide rental assistance, and some are covered by Medical Assistance.

### ◆ Assisted Living—Multi-Family Model

Under this program, the resident lives in his or her own apartment in an apartment building designed for senior citizens or those with disabilities. To be eligible to receive the service, the individual must be elderly or have disabilities, need assistance with activities of daily living, and be unable to live independently. The program usually provides 2-3 meals a day,

personal assistance, housekeeping, and general supervision. Rent assistance may be available for low income persons who might otherwise be in a nursing home.

### ◆ Group Homes

In a group home, four to fifteen residents share a single household. The home may be a private dwelling or it may be a specially designed facility. Group

### CAUTION!

Assisted living facilities are not as strictly regulated as are nursing homes. When selecting an assisted living facility, carefully investigate to find out exactly what services will be provided. A checklist for evaluating an assisted living facility is available from the Consumer Consortium on Assisted Living, (703) 228-5243.



*The Maryland Office on Aging publishes The Housing Directory, a state wide listing of alternative housing options for seniors. Call (800) 243-3425 to ask for a copy.*

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homes offer a family-like environment while providing assistance to those who cannot be totally independent. The residents have private or semi-private bedrooms and share other common areas of the home. The staff provides 24 hour supervision, 3 meals a day, personal assistance and may provide activities for residents. Some assistance with the cost may be available from the state for low income individuals who might otherwise be in a nursing home.

◆ **Adult Foster Care**

A family shares its home with and provides meals to an adult who is unable to live alone. These homes have fewer residents than group homes.

◆ **Domiciliary Care**

The staff of a domiciliary home provides only custodial care to residents. This model is more like a nursing home, but residents do not need the level of nursing care that is provided in a nursing home.

◆ **Community Residential Services**

The Department of Health and Mental Hygiene provides a limited community residential program for those with mental illness or developmental disabilities. Individuals live in supervised homes or apartments, usually with others with the same disabilities.

To find out which of these several assisted living options are available in your area, call the area agency on aging, the Maryland

Office on Aging, the Department of Social Services, or the Department of Health and Mental Hygiene. Numbers are listed in Chapter 8.

**Continuing Care Retirement Communities**

Some retirement communities offer a range of housing and health care services in one place. They are called continuing care retirement communities. Residents may enter the facility able to live independently in their own apartment with cooking facilities, and later move to an assisted living arrangement or a skilled nursing unit as their health declines. These communities agree to provide a secure and protected environment, and access to medical, nursing home and other health-related benefits for as long as the resident lives. The number and scope of prepaid services vary. Some require residents to be older than a certain age.

Residents in a continuing care retirement community pay an entrance fee and sign a residence contract for a period of more than one year. The resident may have to transfer assets to the community, and to pay monthly fees in addition to the entrance fee. The cost for this type of facility is substantial.

To find out more about continuing care retirement communities, call the Maryland Office on Aging, listed in Chapter 8.



*Assisted living options are more available than they were in the past.*

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## WHAT IF THE PERSON CANNOT HANDLE HER MONEY OR PROPERTY?

There are several ways to manage money or property without going through the guardianship process. Some arrangements must be made *before* the person becomes incompetent, and others can be put in place *after* the person becomes incompetent. Some of them are listed below.

### Durable Power of Attorney

A **Durable Power of Attorney** is a legal document in which one person, called the **principal**, appoints another person, called the **agent**, to act on his or her behalf.

**Durable** simply means that the document stays in effect even after the principal becomes incompetent.

A guardian of the property may not be necessary if the person writes or has written a durable power of attorney. An agent appointed in a power of attorney usually is given the same authority a guardian would

have to handle all financial matters for the principal. Generally, if there is a valid power of attorney, there will be no need for a guardian of the property.

A power of attorney *must* be written when the person is mentally competent. For some persons with dementia, it may be too late to write a power of attorney. However, others affected by confusion or mental retardation may be able to adequately express what they want. Even a person who has been diagnosed as being in the early stages of Alzheimer's disease may be able to write a power of attorney. The person must be able to understand what property she has and the consequences of appointing an agent, and be able to clearly communicate her wishes, stating that she wants a certain person to handle her financial affairs. In cases involving Alzheimer's disease, it is important to act as soon as possible, before the disease progresses. See Chapter 2 for a further discussion of the level of competency required to make certain decisions.

Durable powers of attorney usually state that the agent may act in all financial and business matters for the principal. Under this type of document, the agent will have the authority to collect the person's money and income, deposit funds in banking accounts, write checks on the person's accounts, and pay the person's bills. The agent may also have the right to buy and

## CHOOSE YOUR AGENT CAREFULLY

Since the agent usually has broad power over the person's finances, it is important to select a trustworthy agent who is experienced in business matters. A power of attorney is not an option for someone who does not have a trusted friend or relative willing to take on the duties. There are many stories of people losing their savings or property to a dishonest agent appointed through a power of attorney. The principal must be very careful in selecting an agent.



sell property and stock. But the power of attorney can also be written to limit the agent's authority to just a few specific items.

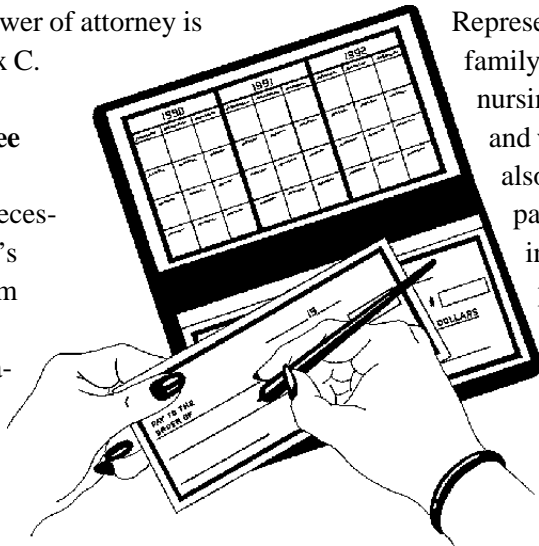
Many people write powers of attorney as part of their estate planning, along with a will and advance directive for health care. It is wise for anyone who has money or property in his or her own name, regardless of age, to write a power of attorney in case a sudden injury or illness leaves that person unable to act.

It is not necessary to have a lawyer write a power of attorney, though it is a good idea, especially if the person has substantial income or assets. If the situation is very simple, however, a simple form may work. These forms are sold in office supply stores and are printed in self-help legal books in the public libraries. Be sure the form has language which makes it "durable." And remember that the principal must understand the meaning of the document and sign it willingly and knowingly.

A sample durable power of attorney is included at Appendix C.

### **Representative Payee**

Guardianship of the property may be unnecessary if the individual's income is mainly from Social Security, Veteran's Administration or other government benefits, and the person has no assets or very limited assets.



These agencies will appoint another person or agency to receive benefit checks for a person who is unable to handle benefits alone. The person appointed is called the **representative payee**. Once appointed, the representative payee can collect the person's monthly income and use it to pay her bills.

There are many advantages to the representative payee program. The representative payee serves the same simple money management function as a guardian of the property, but it is not necessary to file in court. The process is much simpler and less expensive than a guardianship. Since a court does not find the person incompetent, the person retains a sense of independence and autonomy.

The agency paying the benefits will oversee the representative payee in much the same way that the court supervises a guardian of the property. The representative payee must file an annual report with the agency, verifying that the person's funds have been spent on her needs.

Representative payees are usually family members or friends, but nursing homes, public agencies and volunteer organizations can also serve as representative payee. However, a conflict of interest could arise if the person serving as representative payee also cares for the person and takes a fee from the funds for that care.



*Signing a durable power of attorney for finances is the best way to prevent the need for guardianship in the future.*

## HOW TO BECOME A REPRESENTATIVE PAYEE

**T**o be named a representative payee, apply to the agency paying the benefits. A doctor must sign and file with the agency a medical form which certifies that the person is not able to handle her own money. The agency will ask if it is in the best interest of the person for a representative payee to be appointed. The agency will notify the person that someone has applied to be her representative payee. If the person does not object, the agency will send the monthly check to the representative payee, for the use of the beneficiary. The representative payee can open a bank account in both names and can pay the person's bills and buy necessities for her from the monthly income. The representative payee must always act in the best interest of the person.

To apply to be a representative payee, call your local Social Security office or the agency which pays benefits to the person. To find out about volunteer representative payee programs, call the Department of Social Services for your county or the area agency on aging listed in Chapter 8.

### ◆ **Direct Payment:**

The bank can make direct payments from the individual's account for routine bills such as rent, mortgage payments, nursing home payments, and monthly utility bills. With the bank automatically paying these bills, the person is relieved of having to remember to write checks for them each month.

### ◆ **Personal Money**

**Managers:** If the person has substantial funds, she can hire a personal

money manager to receive funds and pay bills.

◆ **Power of Attorney Accounts:** Banks have form powers of attorney which allow an agent to act for the owner of the account only in banking matters at that bank. Contact your bank to ask about these alternatives.

### **Joint Ownership of Bank Accounts**

Many older persons establish joint bank accounts with their spouses, children or other trusted relatives to make sure that the funds in the account go to the other person when the first one dies. But joint bank accounts have another use: they can also prevent the need for a guardian of the property.

If the individual's income comes from a source other than the government, such as a private pension, contact the company's retirement program and inquire if that program has a representative payee plan.

### **Banking Services**

Banks can provide some money management services for those who have accounts. It may be possible to arrange for the following services:

◆ **Direct Deposit:** A person's regular income, such as pension or Social Security checks, can be directly deposited into the individual's account, saving her a trip to the bank.



*A representative payee may make a guardian of the property unnecessary.*

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If two or more persons own a checking or savings account, all owners usually can deposit and withdraw money from that account.

✓For example, if a mother and daughter both have their names on the mother's checking account, the daughter can write checks on the account, even if the mother becomes incompetent. Joint ownership would prevent the situation in which no one can withdraw funds from the mother's account because she has become incompetent and unable to sign checks.

A joint account must be established when the joint owners are mentally competent. However, as with a power of attorney, a person who has limited understanding may be able to willingly and knowingly sign a bank's signature card to establish a joint account. See Chapter 2 for a description of how to decide when a person may have the competence to open a joint account.

There are some disadvantages to joint bank accounts. Since adding a person's name to a bank account gives that person an interest in the funds in the account, government benefit programs, such as Medical Assistance, may see this as making a prohibited gift. Medical Assistance may attribute ownership of all the funds in a joint account to the person applying for benefits, regardless of original ownership of the account. It may change the person's

estate plan, so that the money goes to someone other than the person named in a will. And the funds in a joint account may be attached by the co-owner's creditors.

#### **Authorization of a Specific Transaction**

Maryland law provides for a one time transaction to transfer a specific piece of property without the appointment of a guardian of the property. This procedure is useful when there is only one relatively simple financial matter to be handled, such as a car to be sold, or an insurance policy to be cashed. A petition is filed in the court asking for permission to perform the one transaction without the permanent appointment of a guardian.



*Joint ownership of a bank account can solve money management problems.*



### **CHOOSE JOINT OWNERS CAREFULLY**

**I**t is important to be sure that all joint bank account owners are trustworthy, since all joint owners will have the right to withdraw all the funds in such an account. As with powers of attorney, there are many sad stories of persons losing all their savings to an unscrupulous person who was named as a joint owner of a bank account.

The advantage is that, although a court proceeding must be filed, once the transaction is completed, the case is closed. There is no permanent guardian of the property,

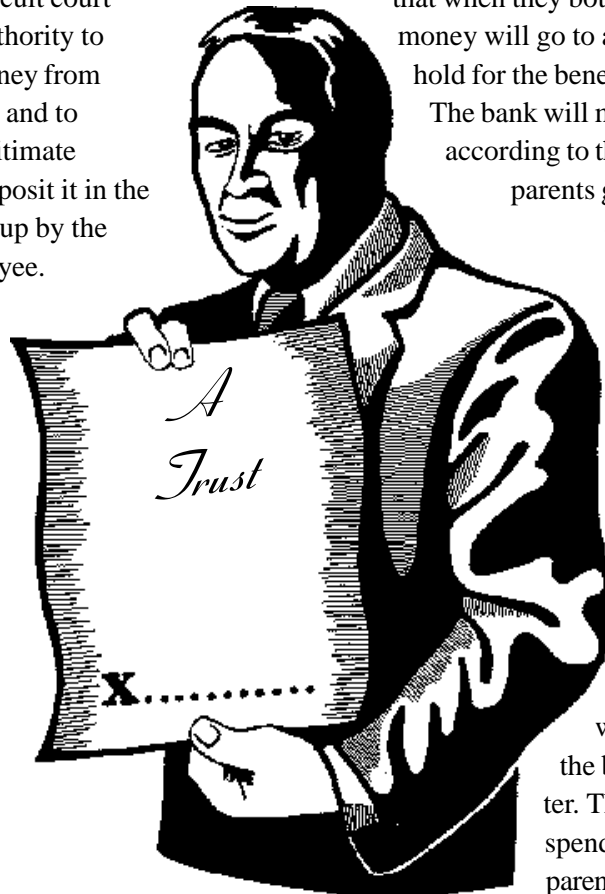


*Planning for one's future incompetency makes things easier for family members.*

there is no need to file a yearly accounting, and no need to file a petition to close the guardianship estate after the person dies. In addition, the person does not permanently lose her independence or broad based rights as in guardianship.

✓ For example, a person may become disabled who has only her monthly Social Security income and a small bank account. A representative payee (see page 27) could be appointed to manage the monthly Social Security checks, but no one can withdraw the money from the bank account because it is titled in the name of the incompetent person alone. A friend, family member or a public agency can file a petition in the circuit court asking for the authority to withdraw the money from the bank account and to spend it for a legitimate purpose, or to deposit it in the joint account set up by the representative payee.

Since it is the only asset that has to be administered, the court can order this one time transaction without appointing a permanent guardian of the property.



You will need the assistance of a lawyer to file a request for authorization of a specific transaction. See the listings in Chapter 8 for legal services in each county.

### Trusts

A trust may be useful to avoid guardianship of the property. A **trust** is a legal arrangement by which one person, the **grantor**, gives property to another, the **trustee**, to hold for the benefit of a third person, the **beneficiary**. Since there is a fee charged by the trustee, this device is usually only used if there are substantial assets.

✓ For example, the parents of an adult with mental retardation decide to set up a trust for their daughter. They direct that when they both have died, their money will go to a bank, the trustee, to hold for the benefit of their daughter.

The bank will manage the money according to the directions the parents give. They might

direct that only the interest on their money be paid periodically to the daughter, or that the money be spent only for the cost of her housing. The trustee would not actually have legal ownership of the property, but would only hold it for the benefit of the daughter. The trustee could spend the funds only as the parents have directed.

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Since a trustee has the same authority as a guardian to collect funds and spend them for the benefit of a person who cannot act for herself, no guardian of the property would be necessary in the example given.

You should see a lawyer to set up a trust for the benefit of someone who is or may be incompetent. Trusts are complicated and flexible. Each one is written to satisfy the particular needs of the grantor and the beneficiary. It is important to set up the trust so that it does not jeopardize the person's eligibility for public benefits, such as Medical Assistance. Call the numbers listed in the legal services sections in Chapter 8 for referral to a trust attorney.



### **WHAT HAPPENS IF A GUARDIAN IS APPOINTED EVEN THOUGH THESE ALTERNATIVES ARE IN PLACE?**

Since the guardian stands in the shoes of the disabled person, she can take any action that the disabled person could have taken. Thus, a guardian appointed by a court has the authority to revoke a power of attorney that the disabled person has made in the past, to close or open bank accounts, and to apply to change a representative payee. Generally, a guardian could not revoke a trust that someone else has established for a disabled person, although the guardian would have the authority to spend the income paid out by the trustee as the trust states.



*The most frequent reason for appointing a guardian of the property is a person's inability to handle money.*

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## CHAPTER 4

# APPOINTMENT OF A GUARDIAN



*To start a guardianship case, a petition is filed in the local circuit court.*

Often there is no way to avoid a guardianship action. Perhaps all other alternatives have been tried and have failed, or perhaps the situation is one for which there is simply no other solution, such as when an incompetent person owns property that must be sold. This chapter describes how to file for guardianship in court.

### HOW IS A GUARDIAN APPOINTED?

In Maryland, a guardian must be appointed by a circuit court judge. The process is started when a person files a **petition** with the circuit court, asking that the court appoint a guardian of the person, of the property, or both. The person who is the subject of the case is called the **alleged disabled person**. (After a guardian is appointed, that person is called the **disabled person**.) A lawyer usually writes and files the petition in court. It contains the basic facts of the case and states what the court is being asked to do.

### WHO FILES THE PETITION?

The petition can be filed by any **interested person**. An interested person is a spouse or close family member, a close friend, or a public agency such as the Department of Social Services. Sometimes hospitals file the petition, as when an incompetent patient

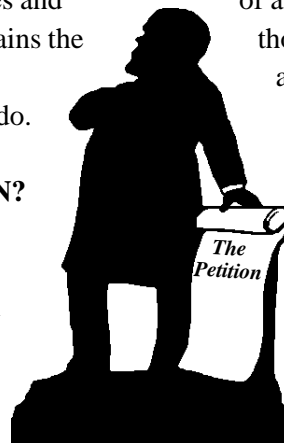
cannot be discharged to another care facility because the patient has no one who can sign the necessary discharge and admission papers and take care of financial arrangements. The hospital asks that a public guardian or someone else be appointed guardian.

### WHAT DOES THE PETITION CONTAIN?

The petition contains all of the basic facts about the situation. The petition lists the name, address, age and Social Security number of the alleged disabled person. It states the relationship of the petitioner to the alleged disabled person. It states why the petition is being filed, and why the petitioner is asking that a guardian be appointed. It lists the names and addresses of all other interested persons, that is, those who are the closest relatives of the alleged disabled person, as well as any agency that is paying money to her, and anyone else whom the petitioner thinks should be notified about the guardianship petition.

### WHAT ELSE IS FILED WITH THE PETITION?

Two certificates signed by doctors must be filed with the petition. Both doctors must have examined the alleged disabled person and both must



certify that the person is incompetent. One of the doctors must have examined the person within 21 days before the petition is filed.

Often the first step in obtaining guardianship is having two doctors examine the person, make a medical judgment about the person's mental capacity, and fill out the certificates. These may become evidence in the case, or the doctors may be witnesses who testify in the case.

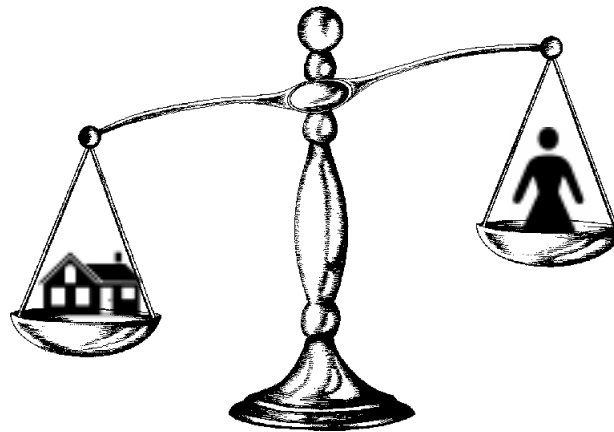
### **ARE THERE DIFFERENT KINDS OF GUARDIANS?**

Yes, a **guardian of the property** takes care of the disabled person's financial and business affairs and her property, including monthly income, bank accounts, real estate, stocks and bonds, valuable personal items and other assets. A **guardian of the person** takes care of all affairs that concern the disabled individual personally, such as living arrangements and medical care. One person can serve as both guardian of the person and guardian of the property, or different people may serve in each role. The petition must state which kind of guardian is being requested: guardian of the person, guardian of the property or both.

### **WHAT IS DONE WITH THE PETITION?**

The petition is filed in the circuit court in the county in which the alleged disabled person lives. The filing fee will be about \$100. This fee can be waived if the peti-

tioner is not able to pay it. If the alleged disabled person does not have her own attorney, the court appoints one to represent her. The petition, the doctors' certificates, and other court papers are served on the alleged disabled person and her attorney. This means that the papers must be officially delivered to those persons. All of the interested persons (close family members and agencies paying benefits to the alleged disabled person) listed in the petition are sent a copy of the papers also. The court



gives these people a certain amount of time to object to the guardianship, or to otherwise communicate with the court.

### **CAN THE ALLEGED DISABLED PERSON OBJECT TO THE APPOINTMENT OF A GUARDIAN?**

Yes. The alleged disabled person is entitled to defend herself against the appointment of a guardian. Sometimes she may be so confused or sick that this is not possible. However, many who are the subjects of guardianship cases *can* communicate with their lawyers to express their feelings about it or to protest the appointment of a guardian.



*Two doctors must certify that the person is incompetent.*

## ROLE OF THE ATTORNEY

There are many things a lawyer for the alleged disabled person can do. The attorney can—

- ◆ investigate to try to find less restrictive alternatives to guardianship, such as home health care and other supportive services which will enable the person to remain at home;
- ◆ ask for a social work assessment of the situation to identify care options for the person;
- ◆ get another, more favorable medical examination to counter the physicians' certificates filed by the petitioner;
- ◆ contact potential witnesses who will support the person's position;
- ◆ find a person more acceptable as a guardian, if the person objects to the person nominated; and
- ◆ argue for a limited or temporary guardianship order, so that even if a guardian is appointed, the person is left with as much control over her life as possible.



- ✓ For example, the alleged disabled person may not like or trust the person who is asking to be named guardian. She may think the person simply wants control of her money. Or, if the petitioner is alleging that she cannot maintain herself in her home, she may

argue that she can care for herself adequately and present a plan which will ensure her safety.

Whatever her objection, the alleged disabled person has the right to try to prove in court that she does not need a guardian. Her lawyer is appointed to help her do this. The lawyer's role is to be the voice of the person in the guardianship proceeding, to help the person make the best case possible, and to be sure that she has her "day in court."

### WILL THERE BE A COURT HEARING?

In most cases there will be a hearing before a judge on the facts presented in the petition. The judge must make three decisions:

- ◆ Is the person incompetent according to the legal definition?
- ◆ Are there less restrictive alternatives?
- ◆ Is the proposed guardian a fit and proper person to be guardian?

The judge will take testimony or ask for other evidence to prove these questions. Usually the petitioner testifies, as well as others who know about the case, such as social service workers. Often a doctor testifies. The alleged disabled person may testify as well, in order to tell the judge what she wants and what she thinks should be done.

## WHO CAN BE A GUARDIAN?

A family member or friend of the disabled person can serve as guardian, as well as an attorney, a public agency, a trust company, or a corporation. The court always decides who is the best person to serve as a disabled person's guardian. A guardian must be willing to serve, must demonstrate that he or she is familiar with the disabled person and her needs, and that the guardian is able to meet those needs. The guardian must be willing to keep records of all the financial matters handled for the disabled person, and be able to file timely reports to the court about the person's well being and property.

The guardianship law lists potential guardians in order of preference. The court usually makes appointments according to that list. The judge may name someone lower on the list, however, if there is good reason to do so. The court will appoint a guardian in this order of preference:

- 1) A person, agency or corporation the disabled person named to be her guardian when she was competent;
- 2) A health care agent the disabled person named under the Health Care Decisions Act (see page 16);
- 3) The spouse of the disabled person;
- 4) The parent of the disabled person;
- 5) A person, agency, or corporation named by the will of a deceased parent;
- 6) The children of the disabled person;
- 7) Someone who would inherit from the alleged disabled person if she died;
- 8) Any other person, agency or corporation nominated by the person caring for the disabled person;

## RIGHTS OF THE ALLEGED DISABLED PERSON

The alleged disabled person has these legal rights—

- ◆ to be advised about her rights and the effect of a guardianship;
- ◆ to be represented by an attorney;
- ◆ to have a jury trial;
- ◆ to be present in court when her case is heard if she so chooses;
- ◆ if the person has a disability and cannot attend a hearing at the courthouse, the person may ask the court to hold the hearing at a place to which she has access;
- ◆ to present evidence and witnesses;
- ◆ to testify in court;
- ◆ to ask the judge to seal or close the courtroom so that she is not embarrassed by public testimony about her mental competence; and
- ◆ to appeal to a higher court if the court issues an unfavorable decision.



- 9) Any other person, agency or corporation considered appropriate by the court;
- 10) For those less than age 65, the director of the local Department of Social Services; for those 65 or older, the director of the local agency on aging.



*A guardianship order  
may be appealed.*

## **WHAT IS A GUARDIANSHIP ORDER?**

After both sides have presented their cases, the judge will make a decision. The judgment of the court must be based on “clear and convincing evidence.” This is legal term which means that the petitioner must prove his or her case with substantial evidence. If the petitioner does not present substantial evidence that the person needs a guardian, or if there are less restrictive alternatives, the guardianship suit should be dismissed.

The judge will issue an order which states whether or not the person meets the legal definition of a person who needs a guardian, and if so, the name of the person or agency the court appoints. The court will also state in the order exactly what it is the guardian can do.

The law states that the court can give to the guardian of the person only those powers which the petitioner has proven are necessary. This is called a **limited guardianship order**. The attorney for the alleged disabled person can argue for an order which is very limited and which will have the least impact on the life of the alleged disabled person.

## **CAN A GUARDIANSHIP APPOINTMENT BE APPEALED?**

Yes, a disabled person may appeal the appointment of a guardian to a higher court. She must file an appeal within thirty days of the court’s order granting guardianship. See Chapter 8 for a list of free or reduced cost attorneys.

## **WHAT RIGHTS DOES A PERSON HAVE AFTER A GUARDIAN HAS BEEN APPOINTED?**

Maryland law requires that the court issue an order tailored to the needs of the person. This means that a person may retain some individual rights after a guardian has been appointed. Further, there is a provision in the guardianship law which states that a person under guardianship still retains her civil rights.

But by its very nature, a guardianship limits an individual’s rights. Often, after the court finds an individual is incompetent, it may be very difficult for the person to find anyone who will honor her wishes. Her personal freedoms may be very limited, so that it is difficult for her to find someone to help her.

## **WHAT DECISIONS CAN A GUARDIAN MAKE?**

The decisions a guardian is entitled to make should be stated explicitly in the court order granting guardianship. A guardian can make only those decisions authorized in the court order. The court should limit the powers a guardian has, but this is not always the case. Many guardianship orders give the guardian very broad authority over the person and her property. See Chapters 5 and 6 for more detail about a guardian’s duties.

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### **CAN A GUARDIANSHIP BE REVOKED?**

Yes, a court may order that a guardian is no longer needed or that the powers of the guardian should be modified or reduced because the person has recovered from the disabling condition which caused in the appointment of a guardian. To revoke a guardianship, the disabled person or someone else can file a request with the court, stating why a guardian is no longer needed. If the person is claiming that her disability has ceased, she must file one physician's certificate verifying this with the petition.



### **CAN A COURT REMOVE A GUARDIAN?**

Yes, a court can remove a guardian who cannot perform the duties ordered by the court, or who has acted improperly as a guardian.

### **WHEN DOES A GUARDIANSHIP END?**

The guardianship does not end automatically when the person dies. A guardian must file a petition asking the court to terminate the guardianship. A guardian of property must file a final accounting with the court, as well.



***Funeral arrangements may be made by a guardian if there is no close relative to do so.***

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## CHAPTER 5

# GUARDIAN OF THE PROPERTY

The court appoints a guardian of a person's property to manage funds, to do banking, to pay bills, to sell assets, to settle claims, and generally to act as a property manager for someone who cannot act for herself. The guardian of the property has control over the **guardianship estate**, or all the property and income that the person owns or to which she is entitled. In this chapter we describe the job of guardian of property.

### WHAT ARE THE POWERS AND DUTIES OF THE GUARDIAN OF THE PROPERTY?

A guardian of the property must act as a **fiduciary** of the disabled person. A fiduciary is someone who can be trusted to act in the best interest of the disabled person. This means that a guardian must act honestly and faithfully to preserve the disabled person's property and to use the assets for the benefit and welfare of the person.

The guardian of the property has broad powers to handle the assets and income of the disabled person. This includes the authority to collect all money due to the disabled person, such as pension and Social Security checks, debts owed, and rent or mortgage payments.



The guardian may close bank accounts owned by the disabled person, reopen them in the name of the guardian, and use those funds for the expenses of the disabled person. The guardian may spend the person's money to pay for housing, food, clothing, transportation, medical care, to pay child support or alimony, to pay other bills the person may owe, to file tax returns and pay taxes, and generally to pay for the expenses of the person.

The guardian may also make decisions about the person's property, such as whether to sell or mortgage real estate, whether to invest in stocks or bonds, and whether to borrow money to make repairs to a home.



*A guardian of the property must act for the person's best interest.*

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## DOES A GUARDIAN HAVE TO POST A BOND?

The court may order the guardian to post a **bond** with the court. A bond is a kind of insurance policy which guarantees that if the guardian mishandles the person's funds, the bonding company will cover the loss. The bonding company will try to recover from the guardian any losses it must pay out.

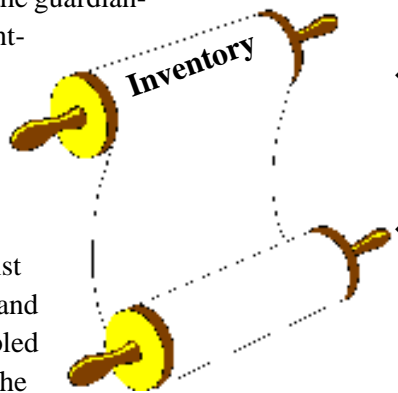
The court decides whether to require a bond or not. Ordinarily, a bond is not required if the entire estate is worth less than \$10,000. The cost of the bond is an expense the guardian can charge to the estate.

## WHAT REPORTS MUST THE GUARDIAN OF THE PROPERTY MAKE TO THE COURT?

The guardian of the property must file an **inventory** of all property within 60 days of being appointed guardian. She must file an **annual accounting** one year after being appointed and every year after that. When the person dies or is found to no longer be disabled, the guardian must file a final accounting and a petition asking the court to terminate the guardianship and her appointment as guardian.

## WHAT IS AN INVENTORY?

An inventory is a list of all of the assets and income of the disabled person at the time the guardian is appointed.



The guardian must file the inventory with the court within sixty days of being appointed guardian of the property. The guardian may have to search through the papers and personal effects of the disabled person, and talk to relatives and friends in order to identify exactly what the person owns. Each item must be clearly described and the fair market value of each item must be stated. The guardian must swear that the inventory is a complete and accurate list of the assets of the disabled person.

## WHAT IS AN ACCOUNTING?

The guardian must keep records of everything she does with the disabled person's money and property. Usually, the guardian must file a report with the court one year after being appointed and each year after that. The accounting must contain the following:

- ◆ A description of all assets of the disabled person and where the assets are located.
- ◆ A summary of all expenses since the last report was filed, the current balance of bank accounts, and the value of the person's assets.
- ◆ A list of all property bought or sold, and the names of the persons who bought or sold the assets.
- ◆ A summary of all income the disabled person received.



*A guardian of the property must file an inventory sixty days after being appointed, and an accounting each year.*



*A guardian must use the same degree of skill and care that a reasonable person would use in handling her own property.*

The trust clerk for the court where the guardianship is filed can supply a form for the accounting. The guardian must swear that the information she is giving is true.

#### **WHAT HAPPENS IF THE GUARDIAN FAILS TO FILE AN INVENTORY OR AN ACCOUNTING?**

If the guardian of the property fails to file the required inventory or accounting, the guardian can be removed by the court and will not be paid for her work.

If the total value of the estate is less than \$10,000, the guardian may ask that she not be required to file an accounting. However, the guardian is still subject to questions from the trust clerk at the circuit court. She must deposit the money in an insured financial institution.

#### **WHO OWNS THE PROPERTY—THE GUARDIAN OR THE DISABLED PERSON?**

The guardian holds legal title to the property after appointment, but can only use the property to provide for the best interest of the disabled person. The guardian may not use the property of the disabled person to benefit the *guardian*. If the guardian uses the property for her own interest, she may be held personally liable for the losses to the disabled person and could be subject to criminal penalties.

#### **CAN A GUARDIAN GIVE GIFTS TO HERSELF OR TO OTHERS FROM THE DISABLED PERSON'S FUNDS?**

The guardian has the duty to manage the funds in the guardianship estate in the best

interest of the disabled person. The guardian may not give gifts unless the gift was a pledge the disabled person made before becoming incompetent. If a guardian gives unpledged gifts, she could be subject to civil or criminal liability.

#### **CAN A GUARDIAN MAKE INVESTMENTS?**

The guardian may make conservative investments if the disabled person has sufficient funds for her daily needs and the money is not needed for her welfare. If the disabled person has limited assets and income, the guardian may need a court order to invest money in other than an interest bearing checking or savings account.

#### **WHAT ARE THE LIMITS OF THE GUARDIAN OF THE PROPERTY?**

The guardian of the property is entitled to handle the property and income in the best interest of the disabled person unless limited by the provisions in a will, trust, or order of the court.

#### **IS THE GUARDIAN OF THE PROPERTY ENTITLED TO A FEE?**

Yes. The guardianship statute provides that the guardian of the property can receive a fee for services provided each year. The fee the court allows is a percentage of the amount of income and assets in the guardianship estate. The guardian must file a request with the court in order to be allowed to collect the fee.

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CHAPTER 6

# GUARDIAN OF THE PERSON

The court appoints a guardian of the person to make personal decisions for the disabled person. Usually, a guardian of the person makes all necessary decisions about the disabled individual's everyday life, from where that person will live to what kind of medical treatment she will receive. After the court appoints a guardian of the person, the guardian has the same rights, powers and duties that a parent has toward an unemancipated minor child.

## WHAT ARE THE POWERS AND DUTIES OF THE GUARDIAN OF THE PERSON?

Each court order appointing a guardian of the person must list the powers and duties given to the guardian. The law states that the court should limit the guardian's authority to those powers which are necessary to meet the needs of the disabled person. This is called a **limited guardianship** order.

Sometimes the court states specifically what the guardian can and cannot do; other times the order says that the guardian has all of the powers listed in the guardianship statute.

## DUTIES OF A GUARDIAN OF THE PERSON

**T**he duties of a guardian of the person may vary from case to case. Generally, the court can grant the guardian the authority to—



- ◆ decide where the person will live;
- ◆ provide for the care, comfort, education, and social and recreational needs of the person;
- ◆ care for the clothing, furniture, vehicles and other personal effects of the person;
- ◆ manage the funds of the person if there is no guardian of the property;
- ◆ request funds for the person's care and needs from the guardian of the property; and
- ◆ consent or withhold consent to medical care, including admission to a hospital or nursing home, with some limitations.

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### WHAT STANDARD SHOULD THE GUARDIAN USE IN MAKING DECISIONS?

The guardian stands in the shoes of the disabled person. Therefore, the guardian should be guided by the wishes of the person to the greatest extent possible, consulting with her about decisions. If it is impossible to do so, the guardian should act in the best interest of the person.

### WHEN MUST THE GUARDIAN SEEK SPECIAL PERMISSION OF THE COURT?

The order appointing the guardian describes what the guardian can and cannot do. Unless the order says otherwise, the guardian of the person can act without special permission of the court. However, there are some instances in which the guardian *must* seek special permission of the court:

#### Life Threatening Treatment

The court must authorize the guardian's consent or withholding of consent to medical treatment which poses a substantial risk to the life of the disabled person.

✓For example, a guardian would have to get court authorization to consent to major heart surgery, or to refuse a feeding tube for a person who has severe Alzheimer's Disease.

Usually the guardian will have to approach the court, either in an informal letter or in a formal motion, when the need for the treatment arises. However, the court can give the guardian the authority to make decisions about life sustaining medical

## INVOLUNTARY COMMITMENT

**T**he guardian cannot consent to the admission of the person to a mental institution. A standard procedure must be followed for anyone to be involuntarily admitted, or committed, to a mental institution, even if there is a guardian. A physician must examine the person and certify that—

- the person has a mental disorder, needs inpatient care or treatment;
- presents a danger to the life or safety of the person or others;
- is unwilling to be admitted voluntarily; and
- there is no less restrictive form of intervention available that is consistent with the welfare and safety of the person.



treatment in advance. The court may do this at the time it appoints a guardian if—

- ◆ the disabled person has executed an advance medical directive (see page 16) which allows the guardian to make such medical decisions, or
- ◆ the guardian is the spouse, adult child, parent or sibling of the disabled person.

This is because under the Health Care Decisions Act, these relatives would have the authority to consent or refuse consent to the provision of life sustaining treatment to the disabled person, even if there was no guardian.

### Change of Abode

The court must authorize moving the person from one type of living arrangement to another.

- ✓ For example, if the guardian wishes to move the person from a private home to a nursing home, or from an assisted living home to a nursing home, she must ask the court's permission.

The guardian does not need permission to move the person from one nursing home to another, however.

### MUST THE GUARDIAN OF THE PERSON FILE AN ANNUAL REPORT WITH THE COURT?

Yes. A guardian of the person must file a report with the court every year. The report is usually due on the anniversary date of the appointment of the guardian. There is a standard form which the guardian can obtain from the county court clerk's office. In it, the guardian describes the disabled person's physical condition, living situation, and reports any changes that have occurred since the last report. The guardian may also recommend whether or not the guardianship should continue.



### IS THE GUARDIAN OF THE PERSON ENTITLED TO A FEE?

No. A guardian of the person is not entitled to a fee from the person's funds for her services unless she is also providing care and maintenance to the person. In that case, the guardian of the person may ask the guardian of the property for reimbursement for such things as the cost of the person's room and board.



*The guardian should discuss decisions with the disabled person, if possible.*



# WHAT IS A PUBLIC GUARDIANSHIP?

**A** **public guardianship** is one in which the director of the local Department of Social Services or the director of the local agency on aging is appointed to serve as guardian of the person.

If the disabled person is younger than 65 years old, the director of the Department of Social Services is appointed to be guardian; if the person is 65 or older, the director of the Maryland Office on Aging or the local agency on aging is appointed guardian. Public guardians may only serve as guardian of the person, not as guardian of the property. If there is no one else willing to act as guardian of the property, the court will usually appoint a private attorney, who will take a fee from the guardianship estate of the disabled person.

## **WHEN IS A PUBLIC GUARDIAN APPOINTED?**

A public guardian is appointed only when there is no family member or friend willing or able to serve as guardian. In these cases, a staff person from the agency fills the role of the guardian, visiting the disabled person on a regular basis and making sure that her needs are met. The public guardian does the same things that a private guardian does: buys food or clothing for the

person from the person's funds, signs consent forms for her medical care, and makes decisions about where the person is to live.

## **WHAT IS THE ADULT PUBLIC GUARDIANSHIP REVIEW BOARD?**

An Adult Public Guardianship Review Board is established in each county of Maryland and the City of Baltimore to review public guardianships. The Adult Public Guardianship Review Board (APGRB) assesses each public guardianship case in that county twice a year. The purpose of the board is to ensure that the public guardian is doing a good job for the disabled person. The disabled person has the right to be present at the review, if she is able, and to be represented by an attorney. The board gathers information, and hears testimony from the disabled person, the disabled person's attorney and anyone else who has important information about the case. The board decides whether the guardian should be doing anything differently, suggests ways to address problems which arise, and recommends to the court whether the guardianship should be continued, modified or terminated. The court may or may not follow the recommendation of the board. The APGRB is made up of volunteers and local government employees.

# EMERGENCY GUARDIANSHIP

## WHAT IF THERE IS NOT TIME TO FOLLOW NORMAL GUARDIANSHIP PROCEDURES?

When the situation is urgent and a guardian must be appointed immediately, the law provides for the appointment of an **emergency guardian**. Emergency procedures can be used when a person is living in conditions which pose a substantial risk of death or serious physical harm to himself or to others.

✓ For example, if a person is questionably competent, is living in a home with no heat, refuses to leave the home, and frigid weather is predicted, someone may petition to have an emergency guardian appointed to forcibly remove the person to a safe place.

Emergency procedures may also be used to remove an incompetent person from an abusive living situation, or to remove an incompetent person who is abusive to others.



*Emergency guardianship is used when there is a risk of death or severe bodily harm.*

## WHAT ABOUT EMERGENCY MEDICAL CARE?



**E**mergency *medical* procedures are a different case. Maryland law allows doctors to give emergency medical treatment to an incompetent person *without consent* if—

- ◆ there is a substantial risk of death or immediate and serious bodily harm to the patient, and
- ◆ delay in treating the person would be harmful to the patient.

Thus, doctors in hospital emergency rooms do not have to seek consent before treating most patients.

Sometimes a person needs medical treatment which is not urgent, but should not be delayed the two to three months that it takes to appoint a guardian of the person. In this situation, an emergency guardianship may be the best solution.

✓ For example, a person may need a heart bypass operation to correct serious heart disease. This procedure would not meet the definition of emergency medical care, but it should not wait. If the person cannot consent to the operation

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because of incompetency, this would be an appropriate case for an emergency guardianship.

### **WHAT IS THE PROCEDURE FOR AN EMERGENCY GUARDIANSHIP?**

The procedure in an emergency guardianship case is similar to that in a standard guardianship case, except that the process is very quick or “expedited.”

To begin a case, an interested person files a petition with the court. The petition contains—

- ◆ the name, address and date of birth of the alleged disabled person;
- ◆ the nature of the alleged disability;
- ◆ what emergency services the person needs;
- ◆ verification that a bona fide emergency exists and that there is no one else who can authorize the emergency action; and
- ◆ an outline of the efforts the petitioner made to obtain the person’s consent to services.

It is not necessary to file doctors' certificates with the emergency petition, although medical evidence of the person’s incompetency will certainly be required by the judge.

### **WHAT RIGHTS DOES THE ALLEGED DISABLED PERSON HAVE?**

The subject of the petition has the same rights that she would have in a standard guardianship case, except that the judge may set very short time deadlines, and may waive certain rights because an emergency exists.

- ◆ The person must be given notice at least 24 hours before the hearing that a petition has been filed against her and that a hearing will be held, unless the judge waives this requirement.
- ◆ The person has the right to an attorney. If she cannot afford to pay an attorney, one will be appointed for her.
- ◆ The person has the right to be present at the hearing and to present evidence and cross examine witnesses.
- ◆ If the person has a disability and cannot attend a hearing at the courthouse, the court may hold the hearing at a place accessible to the person.
- ◆ If the court does issue an emergency order, the person may petition to have the order set aside or modified at any time. She may also appeal the appointment of a temporary guardian to the appellate court.



*The judge may order an emergency guardianship on the same day it is filed.*

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## WHAT DOES THE COURT DECIDE?

The court must decide, based on clear and convincing evidence,

- ◆ whether the person lacks capacity,
- ◆ whether an emergency exists, and
- ◆ whether there is anyone else available who can consent to the emergency procedures requested by the petitioner.

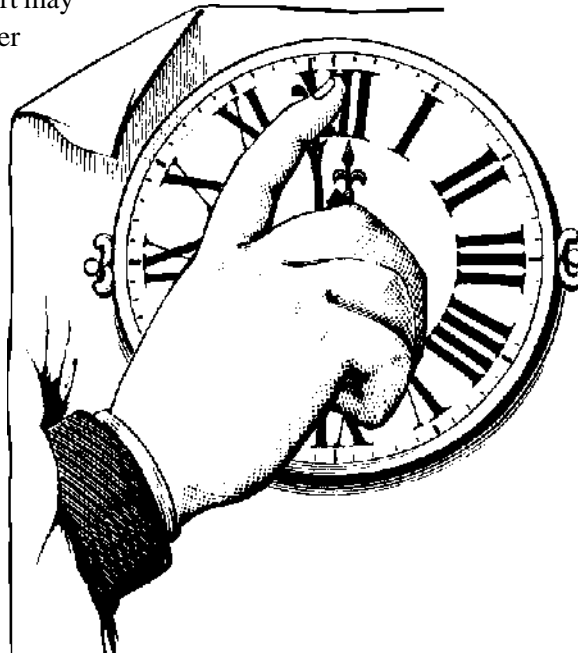
If the court finds that an emergency guardian should be appointed, the court will sign an order specifying what the guardian can do to remove the emergency. The court may authorize the guardian to forcibly enter the premises of the disabled person in order to provide services to the person or to remove the person to a safe location. If the guardian is making a forcible entry, the police should accompany her. The court may only order those services necessary to remove the emergency situation.

- ✓ For example, in the first situation described above, in which the person could have suffered death or serious injury from the extreme cold, the court might order that the person be removed from her home and housed in a shelter until her heat is fixed or the weather improves. The court could not appoint a guardian

of the woman's property as an emergency remedy, since no emergency exists regarding her finances.

## HOW LONG DOES THE EMERGENCY GUARDIANSHIP ORDER LAST?

The order appointing a temporary guardian lasts for 144 hours, or 6 days. After that the order expires unless the petitioner asks to extend the order until a permanent guardian can be appointed. The petitioner has to show that the emergency condition will continue unless there is an extended emergency order.



*The judge may confer with doctors on the telephone in an emergency case.*

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CHAPTER 8

# WHERE TO GET HELP

## STATEWIDE

### Senior Information and Assistance

Maryland Office on Aging  
301 W. Preston Street  
Baltimore, MD 21201  
(410) 767-1100 or (800) 243-3425  
TDD (410) 767-1083  
(8 a.m. to 5 p.m., M-F)

### Guardianship

John Coe, Public Guardianship Program Manager  
Maryland Office on Aging  
301 W. Preston Street, Room 1007  
Baltimore, MD 21201  
(410) 767-1074

### Consumer Assistance

Health Education and Advocacy Unit  
Consumer Protection Division  
Office of the Attorney General  
200 Saint Paul Place, 16th Floor  
Baltimore, MD 21202-2022  
(410) 528-1840  
TDD (410) 576-6372

### Statewide Legal Service Programs

*Free legal information and representation in cases involving nursing homes:*

Nursing Home Program  
Legal Aid Bureau, Inc.  
29 West Susquehanna Avenue., Suite 305  
Towson, MD 21204  
(410) 296-6705 or (800) 367-7563  
(9 a.m. to 5 p.m., M-F)

*Assistance to eligible senior citizens in writing wills, powers of attorney, and health care advance directives for a reduced fee:*

Sixty Plus Program  
Maryland Volunteer Lawyers Services  
520 West Fayette Street, 1st Floor  
Baltimore, MD 21201  
(410) 547-6537  
(800) 510-0050

## ALLEGANY COUNTY

### Senior Information and Assistance

Human Resources Development Commission  
Area Agency on Aging  
19 Frederick Street  
Cumberland, MD 21502  
(301) 777-5970 or TTY (800) 735-2258  
(8:30 a.m. - 4:30 p.m., M-F)

Department of Social Services  
218 Paca Street  
P.O. Box 1420 (mailing address)  
Cumberland, MD 21502  
(301) 777-5500  
(8 a.m. - 4:30 p.m., M-F)

### Legal Services Program

HRDC Legal Services Program  
110 Greene Street  
Cumberland, MD 21502  
(301) 722-3390  
(8:30 a.m. - 4:40 p.m., M-F)

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Legal Aid Bureau, Inc.  
110 Greene Street  
P.O. Box 1079 (mailing address)  
Cumberland, MD 21501-1079  
(301) 777-7474  
(9 a.m. - 5 p.m., M-F)

## **ANNE ARUNDEL COUNTY**

### **Senior Information and Assistance**

Area Agency on Aging  
2666 Riva Road, suite 4000  
Annapolis, MD 21401  
(410) 222-4464 or (800) 492-2499  
TTY (410) 222-4464  
(8:30 a.m. - 4 p.m., M-F)

Department of Social Services  
80 West Street  
Westgate Building, 2nd Floor  
Annapolis, MD 21404-1787  
(410) 269-4500  
TDD: (410) 974-8590  
(8 a.m. - 5 p.m., M-F)

### **Legal Services Programs**

Senior Citizens Law Project  
Legal Aid Bureau, Inc.  
229 Hanover Street  
P.O. Box 943 (mailing address)  
Annapolis, MD 21404  
(410) 263-8330 (local)  
(410) 269-0846 (Baltimore)  
(301) 261-1956 (D.C.)  
(9 a.m. - 5 p.m., M-F)

Lawyer Referral Service  
(referrals for fee and no-fee services)  
P.O. Box 161  
Annapolis, MD 21404  
(410) 280-6961  
(8:30 a.m. - 4:30 p.m., M-F)

## **BALTIMORE CITY**

### **Senior Information and Assistance**

Commission on Aging and Retirement Education  
Area Agency on Aging  
34 Market Place, Suite 300  
Baltimore, MD 21202-4004  
(410) 396-4932 or TTY (410) 396-1858  
(8:30 a.m. - 5 p.m., M-F)

Department of Social Services  
1510 Guilford Avenue  
Baltimore, MD 21202-2882  
(410) 361-4700  
(8:30 a.m. - 4:30 p.m., M-F)

### **Legal Services Programs**

*Assistance to eligible senior citizens in writing wills, powers of attorney, and health care advance directives for a reduced fee:*  
Sixty Plus Program  
Lawyer Referral and Information Service  
111 North Calvert Street, Suite 627  
Baltimore, MD 21202  
(410) 539-3112 (no walk-ins)

Legal Aid Bureau, Inc.  
500 East Lexington Street  
Baltimore, MD 21202  
(410) 539-5340

Legal Services to the Elderly  
Baltimore City Bar Association  
111 North Calvert Street, Suite 631  
Baltimore, MD 21202  
(410) 396-1322  
(9 a.m. - 4:30 p.m., M-F)

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## BALTIMORE COUNTY

### Senior Information and Assistance

Department of Aging  
Area Agency on Aging  
611 Central Avenue  
Towson, MD 21204  
(410) 887-2109 or TTY (410) 887-3787  
(9 a.m. - 5 p.m., M-F)

Department of Social Services  
1 Investment Place  
Towson, MD 21204  
(410) 887-2520  
(8 a.m. - 4:30 p.m., M-F)

### Legal Services Programs

Legal Services for the Elderly  
Legal Aid Bureau, Inc.  
29 West Susquehanna Avenue, Suite 305  
Towson, MD 21204  
(410) 296-6705  
(9 a.m. - 5 p.m., M-F)

Sixty Plus Lawyer Referral Service  
401 Bosley Avenue  
Towson, MD 21204  
(410) 337-9100  
(9 a.m. - 4:30 p.m., M-F)

## CALVERT COUNTY

### Senior Information and Assistance

Area Agency on Aging  
450 West Dares Beach Road  
Prince Frederick, MD 20678  
(410) 535-4606 (301) 855-1170  
(8:30 a.m. - 4:30 p.m., M-F)

Department of Social Services  
Louis Goldstein Building  
200 Duke Street  
Prince Frederick, MD 20678  
(410) 535-8700  
(8 a.m. - 5 p.m., M-F)

### Legal Services Programs

Legal Aid Bureau, Inc.  
Southern Maryland Office  
Route #231  
P.O. Box 249 (mailing address)  
Hughesville, MD 20637  
(410) 535-3278  
(301) 843-5850 (D.C. area)  
(8:30 a.m. - 4:30 p.m., M-F)

## CAROLINE COUNTY

Upper Shore Aging, Inc.  
Area Agency on Aging  
201 Talbot Boulevard, Suite C  
Chestertown, MD 21620  
(410) 778-6000  
(8 a.m. - 3 p.m., M-F)

### Senior Information and Assistance

Caroline Senior Center  
107 B South 4th Street  
Denton, MD 21629  
(410) 478-2093 or (410) 479-2535  
(8:30 a.m. - 4:30 p.m.)

Department of Social Services  
Denton Multiservice Center  
207 South Third Street  
P.O. Box 100 (mailing address)  
Denton, MD 21629  
(410) 479-5900  
(8 a.m. - 5 p.m., M-F)

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**Legal Services Programs**

Roland Kent, Esq.  
109 S. Second Street  
Denton, MD 21629  
(410) 479-2800

Legal Aid Bureau, Inc.  
114 South Commerce Street  
P.O. Box 298 (mailing address)  
Centreville, MD 21617  
(410) 758-2543  
(9 a.m. - 5 p.m., M-F)

**CARROLL COUNTY****Senior Information and Assistance**

Bureau on Aging  
Area Agency on Aging  
125 Stoner Avenue  
Westminster, MD 21157  
(410) 876-3363, ext 49  
(410) 848-4049  
(410) 875-3342 Mt Airy  
TTY (410) 848-5355  
(8:30 a.m. - 4 p.m., M-F)

Department of Social Services  
10 Distillery Drive  
Westminster, MD 21157  
(410) 848-8880  
(410) 876-2190 (Baltimore City and Co.)  
(8 a.m. - 4 p.m., M-F)

**Legal Services Programs**

Legal Aid Bureau, Inc.  
Mid-Western Maryland Office  
21 West South Street  
Frederick, MD 21701  
(410) 848-4669  
(9 a.m. - 5 p.m., M-F)  
Intake hours: 9 a.m. - 1 p.m., M-F

Carroll County Bureau on Aging  
125 Stoner Avenue  
Westminster, MD 21157  
(410) 876-3363

**CECIL COUNTY****Senior Information and Assistance**

Area Agency on Aging  
214 North Street  
Elkton, MD 21921  
(410) 996-5295  
(8 a.m. - 4:30 p.m., M-F)

Department of Social Services  
Elkton District Court, Multipurpose Center  
170 East Main Street  
Elkton, MD 21921  
(410) 996-0500  
(8 a.m. - 5 p.m., M-F)

**Legal Services Programs**

Legal Aid Bureau, Inc.  
5 North Main Street, Suite 200  
Bel Air, MD 21014  
(410) 398-5544  
(8 a.m. - 5 p.m., M-F)

John Buck, Esq.  
204 East Main Street  
Elkton, MD 21921  
(410) 398-4772

**CHARLES COUNTY****Senior Information and Assistance**

Department of Community Services  
Aging Division  
Area Agency on Aging  
8190 Port Tobacco Road  
Port Tobacco, MD 20677  
(301) 934-0109  
TTY (800) 735-2258  
(8 a.m. - 4:30 p.m., M-F)

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Department of Social Services  
101 Catalpa Drive  
P.O. Box 1010 (mailing address)  
LaPlata, MD 20646  
(301) 934-2700  
(8 a.m. - 3:30 p.m., M-F)

**Legal Services Programs**

Legal Aid Bureau, Inc.  
Southern Maryland Office  
Route #231  
P.O. Box 249 (mailing address)  
Hughesville, MD 20637  
(301) 932-6661  
(8:30 a.m. - 4:30 p.m., M-F)

**DORCHESTER COUNTY**

**Senior Information and Assistance**

MAC, Inc.  
Area Agency on Aging  
1504 Riverside Drive  
Salisbury, MD 21801  
(410) 742-0505  
(8:30 a.m. - 4:30 p.m., M-F)

Dorchester Community Services Inc.  
24 S. Cambridge Beltway  
Cambridge, Md 21613  
(410) 221-1930

Department of Social Services  
774 Cambridge Plaza  
P.O. Box 217 (mailing address)  
Cambridge, MD 21613  
(410) 228-5100  
(8 a.m. - 5 p.m., M-F)

**Legal Services Programs**

William Leahy, Esq.  
Lee, Leahy & McCaig, L.L.C.  
210 Pier One Road, Suite 102  
Stevensville, MD 21666  
1-800-693-6807

Legal Aid Bureau, Inc.  
111 High Street  
P.O. Box 4116 (mailing address)  
Salisbury, MD 21801  
(410) 546-5511  
(9 a.m. - 5 p.m., M-F)

**FREDERICK COUNTY**

**Senior Information and Assistance**

Commission on Aging  
Area Agency on Aging  
520 North Market Street  
Frederick, MD 21701  
(301) 694-1605 TTY (301) 604-1672  
(8:30 a.m. - 4 p.m., M-F)

Department of Social Services  
100 East All Saints Street  
P.O. Box 237 (mailing address)  
Frederick, MD 21701  
(301) 694-4555  
(8 a.m. - 4 p.m., M-F, except Tu 8 a.m. - 7 p.m.)

**Legal Services Programs**

Janet Farmer, Atty.  
147 W. Patrick Street  
Frederick, MD 21701  
(301) 696-0585

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Legal Aid Bureau, Inc.  
Mid-Western Maryland Office  
21 West South Street  
Frederick, MD 21701  
(301) 694-7414  
(9 a.m. - 5 p.m., M-F)  
Intake hours: 9 a.m. - 1 p.m., M-F

## **GARRETT COUNTY**

### **Senior Information and Assistance**

Area Agency on Aging  
104 East Centre Street  
Oakland, MD 21550-1328  
(301) 334-9431  
(legal services also available)  
(8:30 a.m. - 4:30 p.m., M-F)

Department of Social Services  
12578 Garrett Highway  
P.O. Box 556 (mailing address)  
Oakland, MD 21550-0556  
(301) 334-9461  
(8 a.m. - 4 p.m., M-F)

### **Legal Services Programs**

Craig Ingram, Esq.  
322 Alder Street  
Oakland, MD 21550  
(301) 334-3724

Legal Aid Bureau, Inc.  
110 Greene Street  
P.O. Box 1079 (mailing address)  
Cumberland, MD 21501-1079  
(301) 334-8832  
(9 a.m. - 5 p.m., M-F)

## **HARFORD COUNTY**

### **Senior Information and Assistance**

Area Agency on Aging  
145 North Hickory Avenue  
Bel Air, MD 21014  
(410) 638-3025 or (410) 879-2000, ext. 3331  
(9 a.m. - 4 p.m., M-F)

Department of Social Services  
2 South Bond Street  
Bel Air, MD 21014  
(410) 836-4949  
(8:30 a.m. - 4:30 p.m., M-F)

### **Legal Services Programs**

Senior Citizens Law Project  
Legal Aid Bureau, Inc.  
5 North Main Street, Suite 200  
Bel Air, MD 21014  
(410) 836-8202  
(9 a.m. - 5 p.m., M-F)

## **HOWARD COUNTY**

### **Senior Information and Assistance**

Office on Aging, Adult Community  
Services Division  
Area Agency on Aging  
6751 Columbia Gateway Drive Building  
Columbia, MD 21046  
(410) 313-6410 TTY (410) 313-7214

### **Legal Services for the Elderly/**

**Senior Info. and Assistance**  
Florence Bain Senior Center  
5470 Beaverkill Road  
Columbia, MD 21044  
(410) 313-7212 or -7213  
(8:30 a.m. - 4:30 p.m., M-F)

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Department of Social Services  
7121 Columbia Gateway Drive  
Ellicott City, MD 21046  
(410) 872-4200  
(8 a.m. - 5 p.m., M-F)

**Legal Services Programs**

Patricia Storch, Atty.  
5418 Hesperus Drive  
Columbia, MD 21044  
(410) 465-3037

Lawyer Referral Service  
(410) 465-2721 (no walk-ins)

**KENT COUNTY**

**Senior Information and Assistance**

Upper Shore Aging, Inc.  
Area Agency on Aging  
201 Talbot Blvd., Suite C  
Chestertown, MD 21620  
(410) 778-6000

Kent Senior Center  
118 North Cross Street  
Chestertown, MD 21620  
(410) 778-2564  
(8 a.m. - 3 p.m., M-F)

Department of Social Services  
350 High Street  
P.O. Box 670 (mailing address)  
Chestertown, MD 21620  
(410) 778-0820  
(7:30 a.m. - 4:30 p.m., M-F)

**Legal Services Programs**

Robert H. Strong, Esq.  
105 Court Street  
Chestertown, MD 21620-0228  
(410) 778-5525

Legal Aid Bureau, Inc.  
114 South Commerce Street  
P.O. Box 298 (mailing address)  
Centreville, MD 21617  
(410) 758-2543  
(9 a.m. - 5 p.m., M-F)

**MONTGOMERY COUNTY**

**Senior Information and Assistance**

Department of Family Resources,  
Division of Aging and Disability Services  
Area Agency on Aging  
401 Hungerford Drive, 4th Floor  
Rockville, MD 20850  
(301) 217-1131  
(8:30 a.m. - 4:30 p.m.)

Department of Social Services  
Rockville Office  
5630 Fishers Lane  
Rockville, MD 20852  
(301) 468-4301 or -4303  
TDD (301) 468-4637  
(8:30 a.m. - 5 p.m., M-F,  
except Tu 8:30 a.m. - 7 p.m.)

Silver Spring Office  
8818 Georgia Avenue  
Silver Spring, MD 20910  
(301) 217-3000  
TDD (301) 217-3149  
(8:30 a.m. - 5 p.m., M-F)

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Germantown Office  
12900 Middlebrook Road  
Germantown, MD 20874  
(301) 217-3420  
TDD (301) 217-3402  
(8 a.m. - 5 p.m., M-F)

**Legal Services Programs**  
**Legal Services for Senior Citizens**  
Legal Aid Bureau, Inc.  
6811 Kenilworth Avenue, Suite 500  
Calvert Building  
Riverdale, MD 20737-1333  
(301) 927-6800  
(9 a.m. - 5 p.m., M-F)

Legal Aid Clinic  
TESS Community Service Center  
8513 Piney Branch Road  
Silver Spring, MD 20901  
(301) 565-7675  
(9 a.m. - 5 p.m., M-F)

Lawyer Referral Service/  
Pro Bono Program  
27 West Jefferson Street  
Rockville, MD 20850  
(301) 279-9100 Referral Service  
(301) 424-7651 Pro Bono Program  
(9 a.m. - 4:30 p.m., M-F)

## **PRINCE GEORGE'S COUNTY**

**Senior Information and Assistance**  
Department of Family Services, Div. of Aging  
Area Agency on Aging  
5012 Rhode Island Avenue, Room 114  
Hyattsville, MD 20781  
(301) 699-2731 TTY (301) 277-0076  
(8:30 a.m. - 5 p.m., M-F)

Department of Social Services  
6111 Ager Road  
Hyattsville, MD 20782  
(301) 422-5000  
TDD (301) 779-2179

**Legal Services Programs**  
Senior Citizen Law Project  
Legal Aid Bureau, Inc.  
6811 Kenilworth Avenue, Suite 500  
Calvert Building  
Riverdale, MD 20737-1333  
(301) 927-6800  
(9 a.m. - 5 p.m., M-F)

Lawyer Referral Service  
(301) 952-1440

Law Foundation of Prince George's Co.  
5303 Baltimore Avenue, Suite 200  
Hyattsville, MD 20781  
(301) 864-8354

## **QUEEN ANNE'S COUNTY**

**Senior Information and Assistance**  
Area Agency on Aging  
104 Powell Street  
Centreville, MD 21617  
(410) 758-0848 TTY (410) 758-2126  
(8 a.m. - 4 p.m., M-F)

Department of Social Services  
120 Broadway  
Centreville, MD 21617  
(410) 758-5100  
(8 a.m. - 5 p.m., M-F)

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**Legal Services Programs**

Legal Aid Bureau, Inc.  
114 South Commerce Street  
P.O. Box 298 (mailing address)  
Centreville, MD 21617  
(410) 758-2543  
(9 a.m. - 5 p.m., M-F)

**ST. MARY'S COUNTY****Senior Information and Assistance**

St. Mary's Transit  
44174 Airport Drive, Suite 800  
California, MD 20619  
(301) 475-5100 or (301) 475-5621, ext. 474  
(8 a.m. - 5 p.m., M-F)

Department of Social Services  
23110 Leonard Hall Drive  
Leonardtown, MD 20650  
(301) 475-4700  
(7:30 a.m. - 5 p.m., MWF,  
1st and 3rd Tues. 8 a.m. - 7 p.m.)

**Legal Services Programs**

Legal Aid Bureau, Inc.  
Southern Maryland Office  
Route #231  
P.O. Box 249 (mailing address)  
Hughesville, MD 20637  
(301) 884-5935  
(8:30 a.m. - 4:30 p.m., M-F)

**SOMERSET COUNTY****Senior Information and Assistance**

MAC, Inc.  
Area Agency on Aging  
1504 Riverside Drive  
Salisbury, MD 21801  
(410) 742-0505

Commission on Aging  
11916 North Somerset Avenue  
Princess Anne, MD 21853  
(410) 651-0020  
(8:30 a.m. - 4:30 p.m., M-F)

Department of Social Services  
30397 Mount Vernon Road  
P.O. Box 369 (mailing address)  
Princess Anne, MD 21853  
(410) 651-0311  
(8 a.m. - 5 p.m., M-F)

**Legal Services Programs**

Nancy White McCaig, Atty.  
Lee, Leahy & McCaig, L.L.C.  
100 Downtown Plaza, Suite 205  
P. O. Box 345  
Salisbury, MD 21803-0345  
(410) 546-6369

Legal Aid Bureau, Inc.  
111 High Street  
P.O. Box 4116 (mailing address)  
Salisbury, MD 21801  
(410) 546-5511  
(9 a.m. - 5 p.m., M-F)

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## TALBOT COUNTY

### Senior Information and Assistance

Upper Shore Aging, Inc.  
Area Agency on Aging  
201 Talbot Boulevard  
Chestertown, MD 21620  
(410) 756-6500

Talbot County Senior Center  
400 Brooklets Avenue  
Easton, MD 21601  
(410) 822-2869  
(8:00 a.m.- 4:30 p.m. M-F)

Department of Social Services  
10 South Hanson Street  
P.O. Box 1479 (mailing address)  
Easton, MD 21601  
(410) 822-1617  
(8 a.m. - 5 p.m., M-F)

### Legal Services Programs

John M. Egleseder, Esq.  
P.O. Box 544  
St. Michael's MD 21663  
(410) 822-4933

Legal Aid Bureau, Inc.  
114 South Commerce Street  
P.O. Box 298 (mailing address)  
Centreville, MD 21617  
(410) 758-2543  
(9 a.m. - 5 p.m., M-F)

## WASHINGTON COUNTY

### Senior Information and Assistance

Commission on Aging, Inc.  
Area Agency on Aging  
9 Public Square  
Hagerstown, MD 21740  
(301) 790-0275 TTY (800) 735-2258  
(8:30 a.m. - 4:30 p.m., M-F)

Department of Social Services  
122 North Potomac Street  
P.O. Box 1419 (mailing address)  
Hagerstown, MD 21741-1419  
(301) 791-4030  
(8:30 a.m. - 4:30 p.m., M-F)

### Legal Services Programs

Senior Legal Assistance Program  
Washington County Commission on Aging  
9 Public Square  
Hagerstown MD 21801  
(301) 790-0275

Legal Aid Bureau, Inc.  
Mid-Western Maryland Office  
21 West South Street  
Frederick, MD 21701  
(301) 694-7414  
(9 a.m. - 5 p.m., M-F)

## WICOMICO COUNTY

### Senior Information and Assistance

MAC, Inc.  
Area Agency on Aging  
1504 Riverside Drive  
Salisbury, MD 21801  
(410) 543-0388  
(8:30 a.m. - 4:30 p.m., M-F)

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Department of Social Services  
Salisbury District Court  
201 Baptist Street, 3rd Floor  
P.O. Box 2298 (mailing address)  
Salisbury, MD 21802-2298  
(410) 543-6900  
(8 a.m. - 5 p.m., M-F)

**Legal Services Programs**

Nancy White McCaig, Atty.  
Lee, Leahy & McCaig, L.L.C.  
100 Downtown Plaza, Suite 205  
P. O. Box 345  
Salisbury, MD 21803-0345  
(410) 546-6369

Legal Aid Bureau, Inc.  
111 High Street  
P.O. Box 4116 (mailing address)  
Salisbury, MD 21801  
(410) 546-5511  
(9 a.m. - 5 p.m., M-F)

## **WORCESTER COUNTY**

**Senior Information and Assistance**

MAC, Inc.  
Area Agency on Aging  
1504 Riverside Drive  
Salisbury, MD 21801  
(410) 742-0505

Worcester County Commission on Aging  
Snow Hill Senior Center  
107 East Market Street  
Snow Hill, MD 21863  
(410) 632-1289 or (410) 632-2613  
(8:30 a.m. - 4:30 p.m., M-F)

Department of Social Services  
299 Commerce Street  
P.O. Box 39 (mailing address)  
Snow Hill, MD 21863  
(410) 632-2705  
(8 a.m. - 4:30 p.m., M-F)

**Legal Services Programs**

Nancy White McCaig, Atty.  
Lee, Leahy & McCaig, L.L.C.  
100 Downtown Plaza, Suite 205  
P. O. Box 345  
Salisbury, MD 21803-0345  
(410) 546-6369

Legal Aid Bureau, Inc.  
111 High Street  
P.O. Box 4116 (mailing address)  
Salisbury, MD 21801  
(410) 546-5511  
(9 a.m. - 5 p.m., M-F)

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# GLOSSARY

**ANNUAL ACCOUNTING**—A report that a guardian of the property files yearly with the Court. It lists all the assets and income of the disabled person for the last year, describes what the guardian did with the assets and income, and states how much the person's estate is worth at the time of the report.

**ADVANCE DIRECTIVE**—A document or statement in which a person declares her wishes about future health care. In the advance directive, the person may state her wishes about health care, may appoint a health care agent to make decisions for her, or may do both. The directive goes into effect, unless it states otherwise, when two physicians certify in writing that the patient is unable to make an informed decision.

**AGENT**—a person who is appointed in a power of attorney or advance directive to act for the person appointing the agent.

**ALLEGED DISABLED PERSON**—the term used by the Maryland guardianship law for the person who is the subject of a guardianship case.

**ALZHEIMER'S DISEASE**—the most common type of dementia. A prominent symptom is memory loss, especially for recent events.

**BOND**—A kind of insurance policy which the guardian of the property is sometimes required to purchase and file with the court to guarantee that the person's estate will be administered properly.

**CASE MANAGER**—A social worker or nurse who oversees and coordinates services to a person who needs assistance with activities of daily living and personal care.

**CONTINUING CARE RETIREMENT COMMUNITIES**—Housing available to seniors which provides both a place to live and assistance with medical needs based on a person's ability to function alone. Residents sign long term contracts and pay substantial fees to live in this type of community.

**DEMENTIA**—a condition marked by progressive loss of intellectual functioning. Memory loss is the most obvious symptom. There are a variety of causes, the most common being Alzheimer's Disease.

**DIRECT DEPOSIT**—a banking term meaning that a source of income, such as a pension or Social Security benefits, is electronically deposited in a person's account without a paper check being sent through the mail.

**EMERGENCY GUARDIANSHIP**—a legal procedure in which the court can appoint a guardian, in a very short period of time, to remove a person from a situation which there is a substantial risk of death or serious bodily harm to the person or others.

**FIDUCIARY**—a person, corporation or agency entrusted to manage the finances of another person.

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**GERIATRIC EVALUATION**—an examination by a team of professionals who specialize in problems of older persons. The team assesses the person’s ability to function independently and diagnoses problems. The team meets to discuss the patient and recommend a treatment plan and future care.

**GUARDIAN**—a person or agency appointed by a court to act for a person whom the court finds is incompetent.

**GUARDIANSHIP**—a legal procedure in which a court determines that a person is unable to act for herself and that she is in need of protection. The court appoints another person or agency to act for the person in matters relating to her person, her property, or both.

**GUARDIAN OF THE PERSON**—A person appointed to make decisions about a disabled person’s medical care, residence, food, clothing, shelter and other subjects which affect the person’s physical body.

**GUARDIAN OF THE PROPERTY**—A person appointed to make decisions about a disabled person’s assets, income, property and other financial matters.

**HEALTH CARE AGENT**—A person appointed in an advance directive or living will to make medical decisions for a person when that person cannot make them for herself.

**HEALTH CARE POWER OF ATTORNEY**—a type of advance directive which appoints an agent to act for the person writing the health care power of attorney.

**HOME HEALTH AIDE**—a nursing assistant or other specially trained person who provides services such as washing, bathing, and direct patient care to a person in her home.

**INCOMPETENCY**—limited or impaired mental ability to remember, to reason, to see the consequences of action, or to plan for the future.

**INFORMED CONSENT**—consent to treatment given to a health professional by a patient. For the consent to be informed, the patient must understand the nature, the dangers, and the possible side effects of the treatment. If a person is mentally incompetent, the doctor may obtain the consent from an agent or a surrogate decision maker.

**INTERESTED PERSON**—a spouse, family member, close friend, or agency paying benefits to a person who is the subject of a guardianship proceeding. Interested persons must be notified that a guardianship petition has been filed against the person.

**INVENTORY**—A list of all of the assets and income of the disabled person at the time a guardian of the property is appointed. The guardian of the property must file the inventory with the Court within sixty days of being appointed.

**JOINT TENANTS**—co-owners of property or bank accounts. Each joint tenant has an undivided interest in the entire property. When one co-owner dies, the property automatically passes to the surviving co-owners.

**LIVING WILL**—a type of advance directive in which a person states her wishes about future medical care.

**MEDICAL ASSISTANCE**—a government funded health insurance program which pays for medical care for those who lack the funds to pay for it themselves.

**MENTAL STATUS EXAM**—a test to determine a person’s level of mental functioning.

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**MINI-MENTAL STATUS EXAM**—a commonly used test of a person’s awareness, level of consciousness, attention span, ability to think in abstract terms, ability to follow directions, memory, use of language, and mathematical ability.

**ORAL ADVANCE DIRECTIVE**—an oral statement given by a person in which she appoints a health care agent or gives instructions regarding her medical treatment. It will be valid if she is competent at the time she makes it, she makes it in the presence of a physician and a witness, and the physician notes the request in her medical record and signs and dates the medical record.

**POWER OF ATTORNEY**—A legal document in which an individual, the principal, appoints another person, an agent, to act on her behalf.

**PUBLIC GUARDIAN**—an agency appointed to act as guardian of the person for someone who has no appropriate family member or friend able to serve as guardian. The court appoints the director of the local agency on aging for those age 65 or over, and the director of the local Department of Social Services for those under age 65.

**REPRESENTATIVE PAYEE**—an agent appointed to handle the funds for someone who cannot do it herself. Social Security, the Veteran’s Administration and other pension programs will appoint a representative payee for one of their beneficiaries who cannot handle her own money.

**SURROGATE**—a substitute, or person who acts for another. In Maryland law, this term is used for a family member or close friend who is authorized to make a medical decision for a person who is unable to make a medical decision for herself.

# APPENDIX A

Sample Form  
**ADVANCE DIRECTIVE FOR HEALTH CARE**

I, \_\_\_\_\_ residing at \_\_\_\_\_  
make the following advance directive for health care:

**PART A**  
**APPOINTMENT OF HEALTH CARE AGENT**

*Fill out this part of the form if you want to appoint a health care agent to make health care decisions for you.  
Cross through this part if you do not want to appoint an agent, or if any items on the form do not apply.*

1. I appoint the following individual as my agent to make health care decisions for me:

\_\_\_\_\_  
\_\_\_\_\_

(Full name, address and telephone number of agent)

**Optional:** If this agent is unavailable or is unable or unwilling to act as my agent, then I appoint the following person to act in this capacity:

\_\_\_\_\_  
\_\_\_\_\_

(Full name, address and telephone number of alternate agent)

2. My agent has full power and authority to make health care decisions for me, including the power to
- A. Request, receive and review any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and consent to disclosure of this information;
  - B. Employ and discharge my health care providers;
  - C. Authorize my admission or discharge from any hospital, hospice, nursing home, adult home or other medical care facility; and
  - D. Consent to the provision, withholding, or withdrawal of health care, including, in appropriate circumstances, life-sustaining procedures.

3. My agent's authority begins: (**CIRCLE** the one option that applies):

When two physicians determine that I am incapable of making an informed decision regarding my health care;

**OR**

When this document is signed.

4. My agent is to make health care decisions for me based on the health care instructions I give in this document or on my wishes as otherwise known to my agent. If my wishes are unknown or unclear, my agent is to make health care decisions for me after considering the benefits, burdens and risks that might result from a given treatment or course of treatment or from the withholding or withdrawal of a treatment or course of treatment.

5. My agent shall not be liable for the costs of care based solely on this authorization.

**PART B**  
**HEALTH CARE INSTRUCTIONS**

*Fill out this part of the form if you want to give specific instructions about your health care.*

If I am incapable of making an informed decision regarding my health care, I direct my health care providers, and my agent to follow my instructions as set forth below.

1. If my death from a terminal condition is imminent and even if life-sustaining procedures are used there is no reasonable expectation of my recovery, I direct that my life not be extended by life-sustaining procedures.
2. If I am in a persistent vegetative state, that is, if I am not conscious and am not aware of my environment nor able to interact with others, and there is no reasonable expectation of my recovery, I direct that my life not be extended by life-sustaining procedures.
3. If I have an end-stage condition, that is, a condition caused by injury, disease or illness, as a result of which I have suffered severe and permanent deterioration indicated by incompetency and complete physical dependency and for which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective, I direct that my life not be extended by life-sustaining procedures.
4. I direct (in the following space, indicate any other specific instructions regarding provision or withholding of any health care):

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By signing below, I indicate that I am emotionally and mentally competent to make this Advance Directive and that I understand the purpose and effect of this document.

---

(Date) (Signature of Declarant)

The declarant signed or acknowledged signing these health care instructions in my presence, and based upon my personal observation, appears to be a competent individual.

---

(Signature of Witness)

---

(Signature of Witness)

---

(Address)

---

(Address)

# APPENDIX B

## Sample Form

The Maryland Health Care Decisions Act states that a relative or friend may make medical decisions for an incompetent person if the relative or friend presents a statement to the person's doctor verifying that s/he is familiar with the person and with the person's activities, health and personal beliefs. Only relatives who are NOT the person's guardian, spouse, adult child, parent or adult brother or sister must sign this form. Those relatives may act as a surrogate without signing a statement such as this.

Use this form as a guide in writing the statement.

### STATEMENT OF FRIEND OR RELATIVE

I, \_\_\_\_\_, of \_\_\_\_\_

\_\_\_\_\_, certify the following:

1. I am a competent individual over the age of 18 years.
2. I have known the patient, \_\_\_\_\_, for \_\_\_\_\_ years.
3. My relationship with the patient is that of \_\_\_\_\_ (friend or relative).
4. I have been in regular contact with \_\_\_\_\_ for \_\_\_\_\_ years and I am familiar with his/her activities, health and personal beliefs, as described below:

(Here describe your contacts with the patient and what you know about his/her personal beliefs about health care.)

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Signature

Date

# APPENDIX C

## Sample Form DURABLE POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:** That I, \_\_\_\_\_,  
of \_\_\_\_\_, Maryland, do  
hereby make, constitute and appoint \_\_\_\_\_, my \_\_\_\_\_, of  
\_\_\_\_\_, to be my  
true and lawful agent and attorney-in-fact, to act in, manage and conduct all my estate and all my affairs,  
and for that purpose, for me and in my name, place and stead, and for my use and benefit, and as my act and  
deed, to do all or any of the following acts, deeds and things;

1. To buy, receive, lease, accept or otherwise acquire; to sell, convey, lease, mortgage, hypothecate, pledge, quitclaim, or otherwise encumber or dispose of, or to contract or agree for the acquisition, disposal, or encumbrance of all real estate, chattels real, stocks, bonds, securities and personal property of whatever kind belonging to me, or in which I have any interest, upon such terms as my attorney shall think proper, and to execute any deeds, leases, assignments, mortgages, releases of mortgage, or any other instruments of writing or conveyances of whatsoever kind which might require execution by me in any capacity, in connection with any dealing hereinabove mentioned;
2. To take, hold, possess, invest, lease, maintain, protect, preserve, improve, or otherwise manage any or all of my property or any interest therein, or any property over which I may have control;
3. To deposit in either my name or my name as fiduciary, or my attorney's name in any banking institution, any funds, negotiable paper or moneys which may be due or payable to me either personally or as a fiduciary or agent, and to withdraw funds from any bank, building association, or depository in which I may have such funds deposited in any capacity, and to make, sign, endorse, accept, discount or otherwise deal in checks, promissory notes, drafts, bills of exchange or other negotiable instruments which I might deal in any capacity;
4. To receive, collect, settle, compromise or deal with all rents, negotiable instruments, open accounts, dividends, interest, income of every kind or other moneys payable to me in any capacity;
5. To have access to any safe deposit box to which I may have a right of access;
6. To endorse and transfer stocks, stock rights and warrants and to vote all shares of stocks held by me in any capacity, in person, or by proxy;
7. To execute all tax returns and claims for any and all allowances and reimbursements properly payable to me in any capacity, by the Internal Revenue Service of the United States, or by the Comptroller of the State of Maryland, and to receive, endorse and collect the proceeds of checks payable to my order in any capacity, drawn on the Treasury of the United States or any other federal agency, or any state or municipal agency;

8. And generally, to make all transactions of every sort in relation to real property, chattels real, or personal property of every kind belonging to me, or in which I may have any interest or over which I may have any control, including all acts which I might do in any capacity, though not specifically mentioned herein;
9. Giving, and hereby granting unto the said agent and attorney, full power and authority in and about the premises; with full power to use all means and processes in the law for the full and effectual execution of the business herein described; and to appear for and represent me before any governor, judge, justice, officer and minister of the law whatsoever, in any court, and there on my behalf, to institute, answer, defend and reply until all actions, causes, matters and things whatsoever relating to the premises; also to submit any matter in dispute, respecting the premises, to arbitration or otherwise; with full power to substitute and appoint from time to time one or more attorneys for the purposes aforesaid and to remove such substitute or substitutes at pleasure and to appoint another or others;
10. And generally, to say, do, act, transact, determine, accomplish and finish all matters and things whatsoever relating to the premises as fully, amply, and effectually, as I, if present, ought or might personally do. If the matter should require more special authority than is hereby conferred, I hereby ratify and confirm all and whatsoever my said agent or attorney, or his substitute, shall lawfully do or cause to be done, in or about the premises, by virtue of these presents.

This Power of Attorney shall not be affected by any disability to which I may be subject at any time, and in the event that I become disabled and it is necessary that formal guardianship proceedings be instituted, I direct that \_\_\_\_\_ be appointed as Guardian and that s/he be excused from any requirement for giving bond.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_(SEAL)

**STATE OF MARYLAND, CITY/COUNTY OF \_\_\_\_\_, to wit:**

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared \_\_\_\_\_ and acknowledged the foregoing Power of Attorney to be his/her act and deed.

**AS WITNESS** my hand and Notarial Seal

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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