



## ALTERNATIVES TO ADULT GUARDIANSHIP

A **guardian** for an adult is someone who is chosen by the court to make decisions in place of that adult. The person with a guardian is often called a **ward**. When a court gives powers to a guardian, they take those same powers away from the ward. Because guardianship is a powerful tool that seriously restricts the rights of the ward, it should only be used when necessary. For that reason, it is important to look at alternatives.

Most people with a disability are able to take care of their own lives without a guardian. This paper discusses some alternatives to guardianship. These alternatives can meet the needs of an individual while staying out of the court system. This paper does not discuss every alternative to guardianship. Every person is different, and what works for one situation may not work for another. If you are thinking about a guardianship or its alternatives, you should talk to an experienced attorney in the field.

### **Family and Friends:**

Most people talk to family or friends before making important decisions. People with disabilities are no different. Family members and friends can give guidance and support to an individual, avoiding the need for a guardian. For example, family members and friends can help point out risks, advantages, and consequences of a decision. Family and friends can explain these things in a way that the individual can understand, giving the individual a basis for making the choice.

## **Advocacy:**

Advocates play an important role in assisting individuals with disabilities in handling their affairs. Advocates may be volunteers or professionals who are matched with individuals with disabilities. Organizations like a local **ARC** or **Community Mental Health (CMH)** may have advocates who can serve as guides and advisors with tasks like paying bills, making purchases, and choosing service providers. With the right supports, some individuals may be able to avoid guardianship.

## **Trust Funds:**

A trust is a legal tool that puts a person or an organization (like a bank) in charge of someone else's money. If money is the main reason for thinking about a guardianship, a trust can be a good alternative. If properly designed, a trust gives parents or others a place to put property or money so that it can be managed for the good of the individual. Since the individual does not own the property or money in the trust, the trust does not generally affect eligibility for governmental benefits like SSI.

Trusts are complicated tools that should be designed on an individual basis by an experienced attorney. Before seeking legal assistance, you may want to think about what you want the trust to accomplish.

## **Limited Bank Account:**

Banks can help keep an individual's money safe. Here are two kinds of accounts to consider, but different banks may use different names:

**Cosigners:** Some banks will set up accounts in which at least two people need to sign to make a withdrawal. No person can withdraw money without the other person signing off.

**Limited Accounts:** In a limited account, only a certain amount of money is made available at a time. This way, the individual does not need a second person to sign off on the withdrawal, but access to the money is limited by the bank.

Not all banks are willing to make these special accounts, so you may need to shop around. If these accounts do not fit your needs, you and your bank may be able to design a program that will.

### **Representative Payee:**

If an individual's only source of income is SSI, social security, or other federal supplement, a representative payee may be a helpful alternative to guardianship. A representative payee is a person who is given the authority to receive and manage federal benefits for someone who cannot manage the benefits on their own. To do this, an application needs to be submitted to the **Social Security Administration** or other federal benefit agency, such as the **Veterans Administration**.

### **Power of Attorney:**

A power of attorney is a legal document that gives the decision-making power from one person (principal) to another person (agent). Unlike a guardianship, the court is not involved. A power of attorney can only be used if the principal understands what they are signing. Powers of attorney can be used to officially allow someone else to act in place of the person with a disability. For example, the agent could sign an apartment lease or set up a bank account on behalf of the person with a disability.

A power of attorney can only be signed if the principal understands what they are signing. It is easy to find power of attorney forms on the internet, but only a Michigan attorney can make sure that your power of attorney meets your specific needs, including complying with current Michigan law.

### **Designation of Patient Advocate:**

A designation of patient advocate is a special type of power of attorney. It is a tool that gives someone else the power to make medical decisions if an individual cannot make those decisions for themselves.

Like a regular power of attorney, a designation of patient advocate can only be signed if the individual understands what they are signing. Again, consult with a Michigan attorney if you are interested in a designation of patient advocate.

***This is not a substitute for legal advice. For more information, contact your attorney or call Michigan Protection & Advocacy Service, Inc. at 1-800-288-5923 or 517- 487-1755.***

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