

## Guardianship and Its Alternatives

## Table of Contents

<b>INTRODUCTION</b> .....	<b>5</b>
<b>GUARDIANSHIP IN RHODE ISLAND</b> .....	<b>6</b>
<b>Alternatives to Guardianship</b> .....	<b>6</b>
<b>Limited Guardianship</b> .....	<b>6</b>
<b>Conservatorship</b> .....	<b>6</b>
<b>PART I: ALTERNATIVES TO GUARDIANSHIP</b> .....	<b>7</b>
<b>Why avoid guardianship?</b> .....	<b>7</b>
<b>Supported Decision-Making</b> .....	<b>8</b>
<i>What is Supported Decision-Making?</i> .....	<b>8</b>
<i>Who Can Be a Supporter?</i> .....	<b>8</b>
<i>The SDM Agreement</i> .....	<b>8</b>
<b>Health Care Alternatives</b> .....	<b>10</b>
<i>Durable Power of Attorney for Health Care</i> .....	<b>10</b>
<i>Living Will</i> .....	<b>10</b>
<i>Medical Orders for Life Sustaining Treatment (MOLST)</i> .....	<b>11</b>
<i>Psychiatric Advance Directives</i> .....	<b>11</b>
<b>Financial Management Alternatives</b> .....	<b>12</b>
<i>Representative Payee or Fiduciary</i> .....	<b>12</b>
<i>Trusts</i> .....	<b>12</b>
<i>ABLE Accounts</i> .....	<b>12</b>
<i>Power of Attorney</i> .....	<b>13</b>
<i>Other Informal Options</i> .....	<b>13</b>
<b>PART II: GUARDIANSHIP</b> .....	<b>14</b>
<b>Types of Guardianship in Rhode Island</b> .....	<b>15</b>
<i>Limited guardianship</i> .....	<b>15</b>
<i>Guardianship</i> .....	<b>15</b>
<i>Temporary guardianship</i> .....	<b>15</b>
<b>Who Can Serve as Guardian?</b> .....	<b>17</b>
<b>Duties and Responsibilities</b> .....	<b>18</b>
<i>Estate</i> .....	<b>18</b>
<i>Residence and Health Care</i> .....	<b>18</b>
<i>Relationships</i> .....	<b>19</b>
<b>Creating a Guardianship</b> .....	<b>20</b>
<i>Forms</i> .....	<b>20</b>
<i>Costs</i> .....	<b>20</b>
<i>Notice</i> .....	<b>20</b>
<i>Guardian ad Litem (GAL)</i> .....	<b>21</b>
<i>The Adult's Lawyer</i> .....	<b>22</b>
<b>The Hearing</b> .....	<b>23</b>
<i>Rights of the Adult with a Disability</i> .....	<b>23</b>
<i>Court Decisions</i> .....	<b>23</b>

<b>Appealing a Guardianship .....</b>	<b>24</b>
<b>Changing a Guardianship.....</b>	<b>25</b>
<b>Removing or Ending a Guardianship .....</b>	<b>26</b>

## Disability Rights Rhode Island

Disability Rights Rhode Island (DRRI) is part of the network of Protection and Advocacy (P&A) agencies. There is a P&A in every U.S. state and territory. P&As help people with disabilities protect their legal and human rights. We represent people with many different kinds of physical, intellectual, and mental disabilities. We also investigate complaints of abuse and neglect of people with disabilities.

DRRI believes that each person with a disability has the right to receive the support they need to live the life they want in the community they choose. That is why DRRI represents people with disabilities to prevent guardianship or end a guardianship. We do not help people become the guardian of another person.

This guide gives basic information about alternatives to guardianship and the guardianship process. It is not legal advice. Please contact DRRI or another lawyer for legal advice.

### DRRI CONTACT INFORMATION

Disability Rights Rhode Island

220 Toll Gate Road, Suite A

Warwick, RI 02886

(401) 831-3150

(800) 733-5332 Toll-free

(401) 274-5568 Fax

[www.drri.org](http://www.drri.org)

[info@drri.org](mailto:info@drri.org)

## INTRODUCTION

Every day, adults make decisions about our lives. We decide what to eat, where to live, and who we want to spend time with. We have the right to make choices that others might think are “wrong”. Maybe we eat too much chocolate. Or we stay in a relationship that isn’t supportive. All decisions have consequences and most of us learn from our decisions, whether they end up being positive or negative. That is a natural part of being human.

Adults with disabilities might need help making their own choices. In some cases, their friends and family believe the adult needs someone to make decisions for them. This can happen if family or friends are concerned the adult is making choices that are not good for them. But requiring an adult to have a guardian is extremely serious. It means the adult does not have the right to make important life decisions on their own. That is why Rhode Island law says we have to try other things before guardianship. Those other things are called “alternatives to guardianship.” A court can only require an adult to have a guardian if alternatives do not work.

Disability Rights Rhode Island first wrote this booklet in April 2008. We were called Rhode Island Disability Law Center then. We wrote this booklet to help people with disabilities, their families, and other people who care for them, understand guardianship and its alternatives. DRRI wanted to help people with disabilities speak up for themselves if they want to stop a guardianship, limit it, or ask for changes to their guardianship.

We updated this booklet in January 2026 to focus on alternatives to guardianship. This includes information about Rhode Island’s Supported Decision-Making law. Supported Decision-Making is helpful to avoid guardianship. DRRI also has a version of this booklet that uses simpler language for people who need it.

## GUARDIANSHIP IN RHODE ISLAND

Guardianship is a relationship that a court creates. It is a relationship between an adult with a disability, and another adult or an agency.<sup>1</sup> If an adult with a disability cannot make decisions for themselves, a court can give another person or agency the right to make that adult's decisions. The person or agency who makes the decisions is called a "guardian." The person who has a guardian is called a "ward." The guardian becomes a "substitute decision-maker" for the ward. That means the court gives the guardian the power to make certain decisions for the ward. This might include the ward's health care, where the ward will reside, and how to spend the ward's money. The ward does not have the right to make those decisions anymore.

In Rhode Island, city and town Probate Courts handle guardianship. An adult only has a guardian if the Probate Court orders one.

Taking away someone's legal rights is a serious matter. Guardianship is not always needed. That is why Rhode Island law says that guardianship must be a last resort.<sup>2</sup> The law requires us to assume a person can make their own decisions unless proven otherwise. An adult with a disability may not need a guardian to make all of their decisions. If the person can make some decisions but not others, the court can only order a limited guardianship.

### Alternatives to Guardianship

Rhode Island law requires trying other options before using a guardian. These options are called "alternatives to guardianship." They can be informal, like money management and social service or government benefits programs. Others are legal tools such as trusts and powers of attorney. This booklet explains many of these options.

### Limited Guardianship

The Probate Court must look at which decisions an adult with a disability can and cannot make. If the adult can make some decisions, the Court cannot appoint a guardian to make those decisions. The Court can only give the guardian power to make decisions the adult cannot make on their own. This is called a "limited guardianship." The Court will only order a full guardianship if the adult cannot make any decisions on their own.

### Conservatorship

The Probate Court can appoint a conservator if an adult with a disability cannot manage their own property.<sup>3</sup> A conservator can only make decisions about the person's property. They cannot make any other decisions for the person with the disability.

---

<sup>1</sup> Rhode Island law also has a procedure for guardianship over children. See R.I.G.L. § 33-15.1-1 *et seq.*, "Guardianship of Minors." This booklet is only about adult guardianships.

<sup>2</sup> § 33-15-1.

<sup>3</sup> § 33-15-44.

# PART I: ALTERNATIVES TO GUARDIANSHIP

## Why avoid guardianship?

Guardianship takes away a person's rights to make choices about their own life. It can also be very expensive. The adult with a disability may not get a choice about who becomes their guardian. If the wrong person becomes the guardian, it can be harmful or frustrating for the adult with a disability. Even a kind and caring guardian might take too much control, doing more than what the Probate Court said they could.

We know that some people do not need guardianship, and there are many studies and examples showing that having a guardianship can lead to abuse, neglect or misuse of the person's money ("exploitation").

- In 2016, the Arc of the United States and the American Association on Intellectual and Developmental Disabilities wrote about guardianship. They said when judges and lawyers do not understand the rights of people with disabilities, it can harm those people. They said guardians often get financial benefits from being a guardian.<sup>4</sup>
- In 2021, the American Bar Association (ABA) said most guardians do the right thing. When they do not, the results can be tragic. There are news stories about guardians who steal money and property from their wards, and neglect or abuse them. It can be hard to report this kind of harm because the courts do not have enough resources.<sup>5</sup>

On the other hand, studies show that when people get the help, support, and chances they need to make their own choices, they are better at noticing danger and less likely to be hurt.<sup>6</sup> They may also live happier and healthier lives.<sup>7</sup>

That is why people must try alternatives to guardianship before using guardianship in Rhode Island. We explain some of these alternatives to guardianship in the rest of this section. The right option depends on the kind of help a person needs. People can use other creative options as well.

---

<sup>4</sup> <https://www.aaid.org/news-policy/policy/position-statements/guardianship> (last accessed May 5, 2025).

<sup>5</sup> [https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol-42/vol-42-issue-4-march-april-2021/challenges-in-guardianship-and-guardianship-abuse/](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-42/vol-42-issue-4-march-april-2021/challenges-in-guardianship-and-guardianship-abuse/) (last accessed May 5, 2025).

<sup>6</sup> Khemka, I. *et. al.*, Evaluation of a decision-making curriculum designed to empower women with mental retardation to resist abuse, 110 *American Journal on Mental Retardation*, p. 193-204 (2005).

<sup>7</sup> Shogren, K. and Ward, M., Promoting and enhancing self-determination to improve the post-school outcomes of people with disabilities, 48 *Journal of Vocational Rehabilitation*, p. 187-96 (2018).

# Supported Decision-Making

In 2019, Rhode Island passed the [Supported Decision-Making Act](#). The Supported Decision-Making Act makes Supported Decision-Making Agreements legal. It officially makes Supported Decision-Making an alternative to guardianship.

## *What is Supported Decision-Making?*

Supported Decision-Making (SDM) lets adults with disabilities keep their rights by getting help to make decisions. The idea behind SDM is that every adult can make choices unless there is a proof they cannot.<sup>8</sup>

In SDM, the adult with a disability (called the "principal") chooses people they trust to help them. Those people are called "supporters." Supporters can help gather information and talk through choices. They can help tell other people about the principal's decisions. The principal and supporters make a written plan called a "SDM Agreement." The SDM Agreement gives the supporters legal status to help the principal. It does not take away the principal's right to make their own decisions.

## *Who Can Be a Supporter?*

Supporters in a SDM Agreement can be family, friends, co-workers, and other trusted people. Some people cannot be a supporter. These people include:

- The principal's employer – but if the boss is also the principal's immediate family member, they can be a supporter.
- The principal's employee – but if the employee is also the principal's immediate family member, they can be a supporter.
- A person paid to provide care to the principal. If the provider is also the principal's immediate family member, they can be a supporter.
- A person who has a court order saying they cannot contact the principal.

A supporter cannot make a decision for the principal. They can tell or explain the principal's decisions to others. When a supporter shares the decision, it is the same as if the principal shared the decision themselves. The supporter can get any information the principal could get, such as medical records, to help the principal make decisions.

## *The SDM Agreement*

There is a sample SDM Agreement in the SDM law.<sup>9</sup> People can use other forms that have the

---

<sup>8</sup> "All adults are presumed to be capable of managing their affairs and to have legal capacity." R.I.G.L. § 42-66.13-4(a).

<sup>9</sup> § 42-66.13-10.

same information as the sample Agreement. You can download a [copy of the form](#) from DRRI's website.

The SDM Agreement must include:

- What kind of decisions the supporter can help the principal make.
- What kinds of decisions the supporter cannot help with.
- The name of at least one supporter.
- The supporter wants to help and understands what being a supporter means.
- The supporter's relationship with the principal.

The principal can name more than one supporter in the Agreement. The principal can also choose someone to take over if the supporter cannot help.

The SDM Agreement has to be in writing. The principal and supporter must sign it in front of two adult witnesses OR a notary public. The witnesses cannot be:

- One of the supporters in the Agreement.
- The supporter's employee or representative.
- A person who does not understand how to communicate with the principal.

The principal can end the SDM Agreement at any time. They have to do it in writing. They must tell their supporter that they ended the Agreement. This is called "revoking" the Agreement.

## Health Care Alternatives

### *Durable Power of Attorney for Health Care*

An adult with a disability can write a special form that lets another person make health care decisions for them if they ever cannot make those decisions on their own. This is called a “Durable Power of Attorney for Health Care.” The person who can make those decisions is called the “agent.” In Rhode Island, there is a [specific form](#) to use for the Durable Power of Attorney for Health Care.<sup>10</sup>

The adult with a disability must be able to make their own health care decisions at the time they fill out the form. They do not have to understand every possible medical choice. They don’t have to understand the risks and benefits those choices. They do have to understand they are giving the agent the right to make those decisions. The person should talk to their agent about what they want for their health care, so the agent knows how to help in the future.

The person making the Power of Attorney has to sign it in front of two adult witnesses OR a notary public. The adult should give a copy of their Power of Attorney to their doctor. They can end (“revoke”) the Power of Attorney at any time. They need to tell their doctor if they do.

### *Living Will*

An adult with a disability can also write a living will. It tells doctors what kind of medical care the person wants if they are “terminally ill,” meaning they are sick and dying. A living will does not give another person the right to make the adult’s health care decisions. Instead, it gives the adult’s instructions to the doctor when the adult cannot tell the doctor what they want. A living will can say things like:

- Do not use a machine to breathe for me (a “ventilator”).
- Do not use a feeding tube.
- Do not try to restart my heart if it stops. (This is called a “Do Not Resuscitate Order” or “DNR”.)
- I want all life-saving measures used.

Rhode Island has a [sample living will form](#).<sup>11</sup> People can use other forms. The adult with a disability must be able to make their own health care decisions at the time they write the living will. They must sign it in front of two adult witnesses. The witnesses cannot be related to the adult by blood or marriage. The adult must give their doctors a copy of their living will. They should share it with their agent if they have a Durable Power of Attorney for Health Care. The adult can end (“revoke”) the living will at any time.

---

<sup>10</sup> R.I.G.L. § 23-4.10-2.

<sup>11</sup> § 23-4.11-3(d).

## ***Medical Orders for Life Sustaining Treatment (MOLST)***

An adult with a disability can also fill out a MOLST form. A MOLST is like a living will because it tells the doctor what kind of care the adult wants if they are terminally ill (sick and dying). It is different from a living will because the MOLST form can be used even when the person is still able to talk to the doctor and explain what they want.

Rhode Island has a [specific form](#) for the MOLST.<sup>12</sup> The adult and doctor both have to sign the form.

## ***Psychiatric Advance Directives***

A Psychiatric Advance Directive tells doctors what the adult wants for their mental health treatment. It can include things like:

- Which medications they do or do not want to take.
- Whether they agree to electro-convulsive therapy (“ECT”).
- Which hospitals they prefer in an emergency.

Rhode Island does not have a separate law about Psychiatric Advance Directives. The adult cannot legally write a separate document about their mental health wishes. The adult can include their instructions in a Durable Power of Attorney for Health Care or a living will.

---

<sup>12</sup> § 23-4.11-3.1(d).

## Financial Management Alternatives

### *Representative Payee or Fiduciary*

An adult who gets Social Security benefits (SSI or SSDI) might need help managing that money. The Social Security Administration will choose a person or agency to help. They are called a “Representative Payee,” or “Rep Payee.” A person or agency that wants to be a Rep Payee must fill out an [application](#) with the Social Security Administration.

An adult who gets Veteran’s Administration benefits can get the same kind of help. The Veteran’s Administration calls the person a “Fiduciary.” A person or agency that wants to become a Fiduciary must fill out an [application](#) with the Veteran’s Administration.

The Rep Payee or Fiduciary will get the adult’s benefits check. They must use the benefits to pay for the person’s basic needs, like clothes, food, and a place to live. The Rep Payee or Fiduciary must keep the money in a separate account. They have to keep receipts and records showing how they spent the money to help the adult with the disability.

### *Trusts*

A trust is a legal plan to manage money.<sup>13</sup> A person called a “grantor” gives money to a person called a “trustee.” The trustee uses that money take care of the person with a disability. A trust can give money to a person with a disability without affecting their Social Security or Medicaid. A trust that helps a person with a disability may also be called a “Special Needs Trust.”

The grantor can tell the trustee how to spend the money in the trust. For example, the money might be used for the person’s housing, or only for school. A person who knows and cares for the adult with a disability can be the trustee. An institution like a bank can also be a trustee.

### *ABLE Accounts*

Rhode Island has a law called the Achieving a Better Life Experience Act.<sup>14</sup> It is known as the ABLE program. The ABLE program helps people with disabilities and their families open special savings accounts. People can save money to pay for care related to their disability.

An ABLE account helps the person keep their Social Security or Medicaid. ABLE accounts have special tax benefits.

ABLE accounts are for people who:

- have a disability that started before age 26;
- are blind;

---

<sup>13</sup> Trusts are governed by Title 18 of the Rhode Island General Laws.

<sup>14</sup> R.I.G.L. §§ 42-7.22-20.1 – 20.9.

- qualify for SSI or SSDI; or
- have a doctor’s note that their disability is severe enough to qualify for SSI or SSDI.

### ***Power of Attorney***

An adult with a disability can write a Power of Attorney.<sup>15</sup> This gives another person (their “agent”) the power to make financial decisions for them. This only happens if the adult cannot make those decisions themselves.

The agent can buy or sell a house for the person. They can manage the adult’s money and bank accounts. And they can manage the adult’s personal property and investments.

Rhode Island has a [sample form](#) for a Power of Attorney, but the adult can use another form. The adult must sign the form in front of a notary public. The adult can end (“revoke”) the Power of Attorney at any time. They can also set it to end on a certain date.

### ***Other Informal Options***

- The adult with a disability owns bank accounts with another person.
- A school or social service agency teaches the adult about spending and saving.
- The adult’s friend or family helps them pay bills and budget money.
- The adult signs a “release of information” to let a doctor or school share the adult’s information with other people.

---

<sup>15</sup> § 18-16-2(a).

## PART II: GUARDIANSHIP

Before a child turns 18 years old, their parent is their “natural guardian.”<sup>16</sup> When the child turns 18, the law says they are an adult who can make their own decisions – even if they have a disability. It is the same for an adult who may become disabled later.

Teachers, doctors, and other professionals may tell family or friends they need to become the person’s guardian to help them. This often happens when the person makes choices that others disagree with. But that does not mean the adult cannot make their own decisions. What matters is whether the person understands the risks and benefits of each choice.

Even when a person cannot make all of their own decisions, a guardian is a last resort. There are many other ways to help the adult. For example:

- An adult child can invite their parent to an IEP meeting.
- Any adult can sign a form (called a “release”) that lets someone help with their education or health care.

Rhode Island law says these alternatives must be tried before asking the Probate Court to become an adult’s guardian.

---

<sup>16</sup> R.I.G.L. § 33-15.1-1.

# Types of Guardianship in Rhode Island

Rhode Island has three types of guardianships.

## *Limited guardianship*

Rhode Island has a limited guardianship law. That means the Probate Court must look at what choices the adult can make decisions in four main parts of life:

- Money and finances
- Health care
- Relationships
- Where they live

The Probate Court then decides whether they can make their own choices in each of these areas. If the adult only needs help with some decisions, the court will only give the guardian power to help in those areas.

For example, the adult may be able to manage regular doctor's visits or teeth cleanings. But they might need someone to make decisions about serious medical treatment, like surgery. The Probate Court must only let the guardian make decisions about those bigger types of decisions. This is called "limited guardianship."

## *Guardianship*

A doctor might decide the adult cannot make any decisions in the four life areas. The Probate Court can name a guardian to make all decisions for the adult.

## *Temporary guardianship*

The Court can name a temporary guardian when there is an emergency, and the adult needs a guardian right away.<sup>17</sup> The temporary guardian is only supposed to help until the court decides if the adult needs a permanent guardian.<sup>18</sup>

Temporary guardianship is still serious. It can take away an adult's important rights. For example, the Probate Court can keep the temporary guardian for a long time. The Court can give a temporary guardian a lot of power to make choices. It is very important to be aware that the adult cannot challenge ("appeal") the Court's decision.<sup>19</sup>

Temporary guardianship should be avoided if possible. If a temporary guardianship is truly

---

<sup>17</sup> R.I.G.L. § 33-15-10.

<sup>18</sup> § 33-15-11.

<sup>19</sup> *Id.*

needed, the Court should do all it can to limit the guardian's powers and how long they are the guardian.

#### Temporary limited guardianship for a specific purpose

There is a special kind of temporary guardianship. It can only be used when:

- The adult needs a limited guardian;
- No one is able or willing to be a full time guardian;
- The adult does not have money to take care of themselves; and
- The adult needs to live in a nursing home to get the care they need.

The Probate Court can name a "temporary guardian for a specific purpose." The guardian only has the power to help the adult get into a nursing home.<sup>20</sup> They can sign the adult up for Medicaid or other public benefits. The guardianship ends when the ward is in a nursing home.

---

<sup>20</sup> § 33-15-8.1.

## Who Can Serve as Guardian?

A guardian can be a person or agency.<sup>21</sup> Usually, the adult's family or friends are named as guardians. A bank, lawyer, or nonprofit agency can also be a guardian.

However, an agency that makes money by providing housing, medical care, or social services to the adult cannot be their guardian. That would be a conflict of interest.

When choosing a guardian, the Probate Court has to think about that adult's wishes. The Court must decide whether the guardian can meet the adult's needs. The Court will also check their criminal background.

---

<sup>21</sup> R.I.G.L. § 33-15-6.

## Duties and Responsibilities

A guardian must always do what is best for the “ward” (adult who has a guardian).<sup>22</sup> To do that, the guardian should visit the ward often and ask what the ward wants in different situations.

The guardian may be allowed to help with *some or all* of these four areas:

- The ward’s money and property (called an “estate”)
- Where the ward lives (“residence”)
- The ward’s health care
- The ward’s relationships with other people

A guardian can only make decisions in the areas the court says they are allowed to. For example, if the guardian only has permission to manage the ward’s money, they cannot make health care decisions for the ward.

The ward still keeps all their legal rights unless the Court says they cannot have certain rights. For example, the ward still has the right to vote unless the Court makes a special order saying they cannot. The Court can only take away the right to vote if it finds that the person can’t show, even with help, that they want to vote.

### ***Estate***

If the guardian has authority to manage the ward’s money or property, they must:

- Spend carefully and not waste the ward’s money.
- Use the money only to help the ward and their household. This includes paying for food, clothes, and a place to live.
- Keep the ward’s money separate from the guardian’s own money. This is usually done by opening a special guardianship bank account.
- Send a report to the Probate Court every year. This report must show how much money the ward has, what money came in, and how it was spent.

### ***Residence and Health Care***

If the guardian is allowed to make decisions about where the ward lives or their medical treatment, the guardian must send a report to the Probate Court every year. The report must:

---

<sup>22</sup> R.I.G. L. § 33-15-29.

- Describe how the ward is doing.
- List any important decisions the guardian made for the ward.
- Explain if the ward's ability to make their own decisions has changed.

If the ward can now make some of their own decisions, the guardian must put that in the report. This helps the Court decide if the ward still needs a guardian.

## ***Relationships***

If a guardian is allowed to decide who the ward can spend time with must, they must include those decisions in their yearly report to the Court.

Every adult has the right to take risks – even if it means making mistakes. This is called the “dignity of risk.” It is important when talking about friendships or romantic relationships. A guardian cannot stop a relationship just because they do not like a person. They cannot stop the relationship because they think someone is too old or too young to be friends with or date the ward.

Rhode Island law says the guardian can only limit relationships if it protects the ward from abuse, neglect, or being taken advantage of, or if the ward does not want the relationship.

People who care about an adult with a disability should teach them about safe, healthy relationships, including romantic ones. The Probate Court should be clear about what the guardian can do. Unless the Court says otherwise, the guardian cannot stop the ward from phone calls, visits, or other contact with people.

If there is “good cause,” the guardian can ask the court to make a special order to limit or block contact with someone.<sup>23</sup> If there is abuse or neglect, that is “good cause.” If the ward does not want contact with the person, that is “good cause”. The Probate Court can say that the contact can only happen at certain times or places. The Court can also say the contact must be supervised.

If the guardian blocks a relationship, the ward or any other person can ask the Court to review that decision. They can ask for a review if the Court itself blocked the relationship.

---

<sup>23</sup> § 33-15-18.1(b).

## Creating a Guardianship

Any person or agency who cares about an adult with a disability can ask the Probate Court to choose a guardian. That person or agency does not have to become the guardian. They can just ask the Court to decide that the adult needs a guardian, and who that guardian should be.

### Forms

Rhode Island law uses the same forms for guardianship everywhere in the state. A person or agency who wants to ask for a guardian can get the forms from the Probate Court. They can also get the forms online from the [Secretary of State's Office](#).

The person or agency asking for a guardian is called the "Petitioner." To start the process, the Petitioner must file a form called a "Petition for Limited Guardianship or Guardianship." If they want a guardian right away, they must also file the "Temporary Guardianship" form. These forms go to the Probate Court in the city or town where the adult with a disability lives. If the adult lives out of state, the forms go to the Probate Court where the adult owns property.<sup>24</sup>

The Petitioner must also file a form called a "Decision-Making Assessment Tool" (DMAT). The adult's doctor must use the DMAT to explain whether the adult can make different decisions. The doctor must say what alternatives to guardianship have already been tried. Other people who know or work with the adult can fill out a DMAT too.

### Costs

The Petitioner must pay a fee, called a "filing fee," when they give the forms to the Court. The Petitioner may have to pay to give notice to the adult with a disability, and for someone called a "Guardian Ad Litem." These are explained more below.

If the Probate Court makes someone a guardian, it might make the guardian pay something called a "bond." A bond is money that protects the ward if the guardian doesn't do their job. There are two types of bonds:

- Without surety: the guardian has to pay the bond if something goes wrong.
- With surety: an insurance company has to pay if something goes wrong.

If a family member becomes guardian, they usually do not need to get a surety bond.

### Notice

The adult with a disability must be told that someone filed a Guardianship Petition. This is called "notice." The adult also has to be told that the Probate Court will have a hearing about guardianship.<sup>25</sup> The "Notice" form says when and where the hearing will be. It also tells the

---

<sup>24</sup> R.I.G.L. § 33-15-2.

<sup>25</sup> § 33-15-17.1.

adult about their rights during the hearing.

Giving notice means:

- A person called a “licensed process server” gives a copy of the Notice to the adult in person.
- The Petitioner (or their lawyer) also sends a copy by mail.
- The Petitioner pays for both of these.

The Court must advertise in the newspaper or online that a Petition was filed.<sup>26</sup> The Petitioner may have to pay for the advertisement.

None of these steps are required if the Petitioner only asks for a temporary guardianship.

### ***Guardian ad Litem (GAL)***

After the Petition is filed, the Court must choose a “Guardian ad Litem” (GAL) to help protect the legal rights of the adult with a disability.<sup>27</sup> The GAL is not the adult’s lawyer. Instead, they help the Court get information.

The GAL does not have to be a lawyer. They must have experience or training working with adults with disabilities.

The GAL must:

- Visit the adult in person.
- Explain what guardianship means and how it would affect their life.
- Explain how the court hearing works.
- Go over the adult’s rights and ask if they want to use those rights.
- Review the forms (Petition, Notice, and DMAT) with the adult.
- Talk to the person who might become the guardian.

The GAL writes a report for the Court. The report must say if the adult:

- Wants to go to the hearing.
- Wishes to challenge the Petition (argue against guardianship).
- Wants to limit what the guardian can do.

---

<sup>26</sup> § 33-15-17.1(g).

<sup>27</sup> § 33-15-7.

- Does not want a certain person to be guardian.
- Wants a lawyer to represent them.

Even if the adult does not ask for a lawyer, the GAL can recommend they have one. That recommendation must go in the GAL's report.

Once the adult has a lawyer, the GAL's job ends.<sup>28</sup>

Someone must pay the GAL. If the Court names a guardian, the adult's money pays for the GAL. If the Court does not name a guardian, the Petitioner will have to pay for the GAL.<sup>29</sup>

### ***The Adult's Lawyer***

An adult with a disability has the right to have a lawyer in a guardianship case. The adult can choose and hire their own lawyer. If they want a lawyer but do not have one, the Court will give them one.

---

<sup>28</sup> § 33-15-7(f).

<sup>29</sup> § 33-15-7-(h).

# The Hearing

## *Rights of the Adult with a Disability*

The adult has the right to:

- Go to the hearing and participate in it.
- Challenge the Guardianship Petition, which means telling the Court they disagree with it.
- Ask the Probate Court to limit the guardian's authority.
- Say they do not want a certain person to become their guardian.
- Have a lawyer represent them.
- Compel witnesses, which means the witnesses must come to court.
- Ask questions of the Petitioner's witnesses.
- Challenge the DMAT. This usually means having another expert speak about their ability to make decisions. The adult may also speak for themselves.
- Show evidence that supports them and what they want.

## *Court Decisions*

After hearing all the evidence, the Probate Court must decide if the adult with a disability can make their own decisions in any or all of the areas listed in the Guardianship Petition. The Court might decide the adult cannot make decisions. In that case, the Court must decide whether there are other ways to support the adult, including alternatives to guardianship. The Court can order the use of those alternatives and not appoint a guardian at all.

The Court might decide the adult needs a guardian and no alternatives will work. In that case, the Court will decide who should be the guardian. The Court must decide if the Petitioner is right for the job. If so, the Court will appoint them as guardian. If not, the Court will choose another person to serve as the guardian.

Requiring a guardian for an adult with a disability does not take away that adult's rights unless the Court clearly says so in its order. The Court has to decide that the adult cannot make choices about a certain right before taking it away. For example, an adult with a guardian still has the right to vote unless the Court decides they cannot. The Court must find that the adult cannot show they want to vote before removing that right. The same goes for getting married – the adult keeps that right unless the Court says they cannot get married.

## Appealing a Guardianship

Like many court orders, an order naming a limited guardian or a guardian can be “appealed.” This means the ward can ask another court to change the Probate Court’s decision.

The ward can file an appeal in Superior Court. This must be done in the same county where the Probate Court is. The appeal will be “de novo.” That means the court looks at everything fresh from the beginning. It does not just review what the Probate Court did.<sup>30</sup>

---

<sup>30</sup> R.I.G.L. § 33-23-1.

## Changing a Guardianship

A guardianship order can be changed if needed. The Probate Court must change the order if it no longer fits the adult's needs or takes away more rights than the adult needs.<sup>31</sup>

If the ward and guardian agree there needs to be a change, they can write to the Court together and ask for the change. If they do not agree, either the ward or the guardian can ask the Court to have a hearing to decide.

The ward can ask the Probate Court to change the guardianship order if:

- Their disability changed and now they can make decisions in some life areas. They can ask to get their rights back in those areas.
- The guardian is not doing their job well, or the ward wants a different guardian. The ward can ask the Court to change the order to name someone else to be the guardian.

The guardian can also ask the Probate Court to change the order. This usually happens when the ward's disability gets more significant, and they need someone to make decisions in more life areas. The guardian can ask the Court for the power to make those decisions.

---

<sup>31</sup> R.I.G.L. § 33-15-4(a)(4).

## Removing or Ending a Guardianship

The Probate Court can end the guardian's authority to make decisions over the ward. This is called "removing the guardian."<sup>32</sup> The Court can remove the guardian when:

- They are not doing their job.
- The guardian cannot do the job anymore.
- The guardian wants to quit ("resign").

If the Court removes a guardian and the ward still needs someone to make decisions for them, it will name a new guardian.

The Probate Court can also end the guardianship completely. This means the ward can make all their own decisions again. This happens when the ward's disability improves and now they can make decisions in all life areas. The Court will end the guardianship.

---

<sup>32</sup> R.I.G.L. § 33-15-18.