



Inability to manage affairs, not disability, is the basis for guardianship.

Disability alone cannot be a basis for guardianship.

"Plenary guardianship over a disabled adult is not appropriate where the adult is capable of intelligently directing others to perform tasks for him."

Estate of Fallos, 386 III. App. 3d 831 (4th Dist. 2008)

Guardianship should be seen as a tool of last resort.

Establishing a guardianship requires a party to engage the legal system.

The process also must be followed in order for the court to properly establish a guardian.

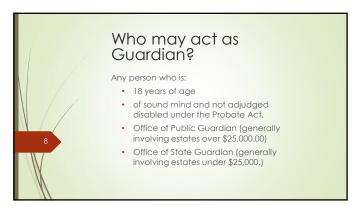
Guardianship is to be ordered only to the extent necessary to promote the well being of the PWD, protect from harm and to encourage development of maximum self-reliance and independence. §11a-3(b)

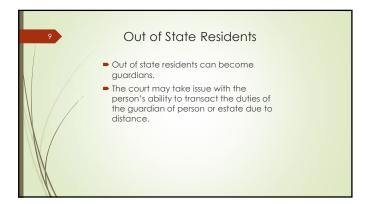
Categories of Guardianship
Temporary (expire after 60 days—can be renewed for up to 120 days).
Guardian of Person (Plenary or Limited).
Guardian of Estate (Plenary or Limited).

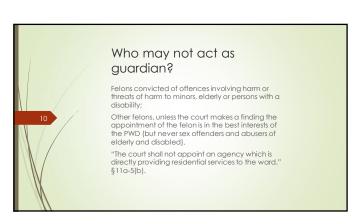
Each category of guardianship has an advance directive counterpart:

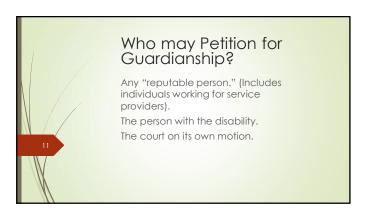
Durable Power of Attorney for Property
Health Care Power of Attorney
Mental Health Advance Directive

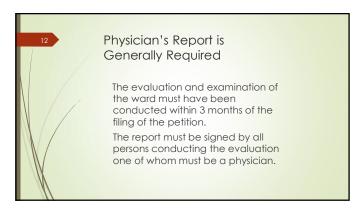




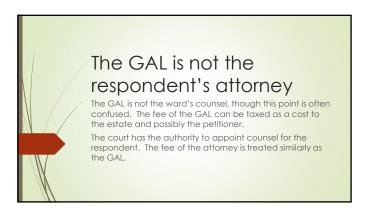












Hearing: Standard of Proof, ward's wishes for choice of guardian.

Court must find by clear and convincing evidence that the Respondent is unable to fully manage affairs.

Further, court must order guardianship only to extent necessary (from which is derived the concept of limited guardianship) and must consider the ward's preference for guardian.



Oath and Bond; guardian training.

The Petitioner, if appointed guardian, is required to sign an oath and bond form. If the bond is a surely (vs. no surely) the guardian must obtain a bond (insurance policy).

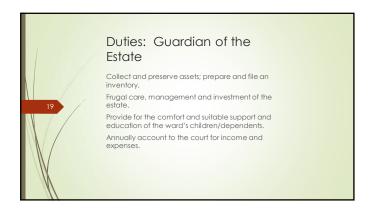
The practice varies by county.

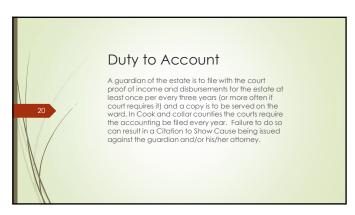
No surety bonds present a risk of financial exploitation.

Once appointed guardian of the person the guardian has one year to complete on-line training and file the certificate.

The training can be found at the link on the 1st slide.







Probate Code limitations on Guardian of Estate's authority.

Guardian cannot sell/mortgage real estate absent court order. 755 ILCS 5/19-1.

Cannot sell, lease, pledge or mortgage ward's chattel (personal property) absent court order. 755 ILCS 5/20-3.

Duties of the Personal
Guardian

Has custody of the Ward and the Ward's
minor children and adult dependent
children.

Shall make provision for their support, care,
comfort, health, education, professional
services, etc. However the right to consent
to medical procedures has its limits......

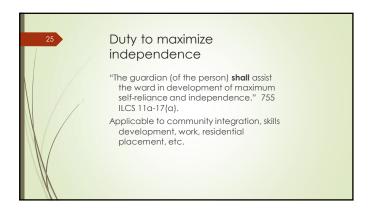
Standard for decision making by Guardian of the Person

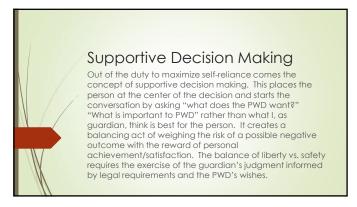
Decisions are to conform to what the ward would have done if competent, guided by stated preferences of ward and ward's moral, religious, philosophical and personal beliefs.

Where possible, guardian is to involve the ward in the decision-making process to the extent they are able and is to act in conformity with those wishes unless they could cause substantial harm to the ward's estate/person. 755 ILCS 5/11a-17(e).

If Ward's wishes are not known or knowable...

If ward's wishes remain unknown after reasonable efforts to discern them, decisions are to be made in the best interests of the ward weighing risks and benefits of the proposed action. 755 ILCS 5/11a-17(e).



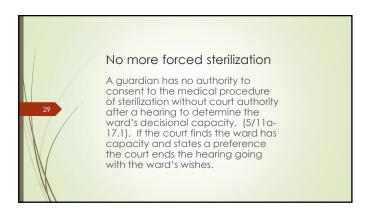


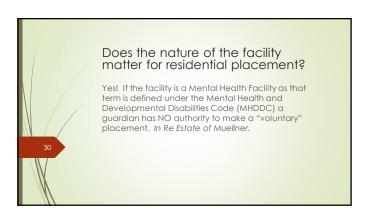


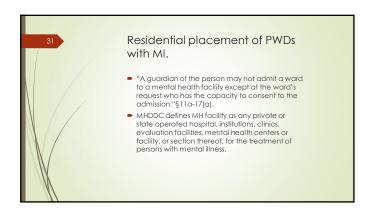
Decisional Capacity
vs. Legal Competency

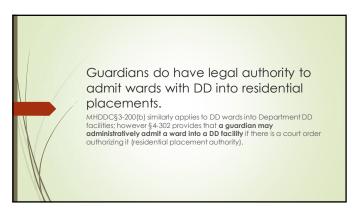
Does a person retain the right to make own medical/other decisions even when he/she has a plenary guardian?

When it comes to medical decisions, including a DNR, the answer is yes if the person has decisional capacity. In Re Estate of Austwick.

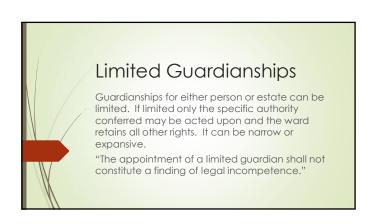








"The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm to the ward or ward's estate." 755 ILCS 5/11a-14.1.



A ward has the right to marry so long as he/she has the mental capacity to understand the nature of marriage. Larson v. Larson, 1963, Pape v. Byrd, 1991.
A guardian may petition the court for leave to consent to marriage.
A guardian can go to court and attempt to prevent the marriage.

