

## **Guardianship and Power of Attorney: General Information and Background**

This Resource is meant to provide general background on a confusing and controversial topic. The Arc of Lehigh & Northampton Counties Advocacy Department does not employ lawyers nor provide legal advice. We encourage all parties seeking information on this topic to meet with an attorney. Please note that this document, or any other provided by the Advocacy Department, is not exhaustive of all options nor endorsing of any organization.

### **GUARDIANSHIP:**

After the age of 18, the law assumes that people can manage their own affairs. Even if you are the biological parent, you are not automatically the legal guardian of someone over the age of 18. Guardianship involves filing a claim in Orphans Court in the county in which you live, getting a hearing date, and then establishing through medical testimony that the individual is incapacitated to the point where he/she requires either a Guardian of the person, a Guardian of the estate, or both. Sometimes a person simply needs a guardian of the estate for money management. In this case, the court may approve a **limited** guardianship.

Guardianship of the estate or property might not be needed if the individual's sole income is from social security and if there is already a representative payee in place. A full guardianship is called a **plenary** guardianship. If guardianship is awarded, the Guardian has annual reporting duties to the court.

There is no guarantee that a court will approve of the guardianship or that it will award the guardianship to the petitioning party. The process can take 2- 3 months and can run around \$2,500- \$3,000. The Lehigh County and Northampton County Bar Association can provide attorney referrals for lawyers who have expertise in this area. If a guardianship is contested, time and money will increase accordingly. Generally, both the individual and his/her petitioners need to be present in court. If there is a medical reason why the alleged incapacitated person cannot attend, there must be medical documentation.

Pennsylvania law does not lean easily toward guardianship because it limits a person's rights. *When considering guardianship, a person's autonomy needs to be balanced with protection from exploitation.* The concept of supported decision-making is a philosophical alternative to guardianship. In this scenario, the individual and a small team of trusted people join to make decisions in the best interest of the individual. Again, it is important to engage the services of an attorney.



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**POWER OF ATTORNEY (POA):**

Power of attorney is a less restrictive process, both in time and finances. In this case, the assumption is that the individual can provide informed consent and freely gives permission to someone who can act as his/her agent. **This means that both the individual and his power of attorney can engage in the same activities**, such as making bank transactions and other decisions. Power of attorney is less expensive and can generally be obtained for under \$300. Again, the assumption is that the individual understands and appreciates the nature and consequences of his actions. No court appearance is needed. Once the power of attorney is drawn up, both parties go to a notary and sign in the notary's presence. ***An individual can decide at any time to revoke the power of attorney.***

There are many attorneys in our area that a family may consult for further advice and direction regarding their personal situation. For a listing of attorneys, you may contact the Lehigh County Bar (610-433-6204) or the Northampton County Bar (610-258-6333) & inquire about their lawyer referral service. In cases of very low income, North Penn Legal Services might be able to assist with guardianship. Please call North Penn Legal Services at 1-877-953-4250 or visit [northpennlegal.org](http://northpennlegal.org).

Sincerely,  
The Arc's Advocacy Department

*For people with intellectual and developmental disabilities*