

I Want to Make My Own Decisions

Autism Society of Alabama: Self-Advocacy

<http://www.autism-society.org/living-with-autism/autism-through-the-lifespan/self-advocacy/>

Alternatives to Guardianships

Until your child turns 19, you have the legal authority as your child's parent to make decisions about important life matters such as:

- where your child is going to live,
- how your child will spend his or her money, and
- your child's education and health care.

Once your child turns 19, your child has the right to make such decisions.

As their children approach the age of 19, many families wonder whether they should seek a guardianship over their children to enable them to retain all or some of that decision-making authority.

A guardianship is a legal proceeding in which a probate court finds that a person is unable to make informed decisions about his or her affairs because of a disability and needs someone – a guardian - to make such decisions for him or her.

To appoint your child a guardian, you have to file a petition with your county's probate court which will then decide whether your child is "incapacitated" as defined under Alabama law. Not every person with a disability is incapacitated. An incapacitated person is someone who

- has one or more of the following impairments: mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause

and

- lacks the ability to make or communicate responsible decisions.

As you work through the difficult decision about whether to pursue a guardianship, you should presume that your adult child is capable of making his or her own decisions. All of us cherish our right to make informed choices and to be independent; your child is no different. In fact, Alabama's guardianship laws reflect a belief that a person with a disability should retain as much independent decision-making as possible.

A person for whom a guardian has been appointed is called a “ward.” In a **full guardianship**, decision-making ability is taken from the ward and placed in the appointing probate court and the guardian. If your child has a full guardianship, all decisions regarding your child's life affairs will be made by the guardian, rather than your child. Alabama's laws are written in such a way that full guardianships are to be used only in very limited circumstances.

A **limited guardianship** is a guardianship in which the guardian only has authority in certain life areas like finances, living arrangements, or health care decisions. The limited guardian's duties are described in the probate court's order. Alabama law prefers limited guardianships so that the ward's freedom and ability to make choices are respected as much as possible and the guardian makes only necessary decisions.

A **conservator** is limited to making decisions about the property of a ward. To obtain a conservatorship, the court must decide that the ward has a disability that keeps him or her from making decisions about financial affairs. A conservator controls the property of the ward and is required to use it for the health, support, maintenance, or education of the ward. A conservator may control how much money is given to a ward for regular expenses and may use the property of the ward to pay bills on behalf of the ward.

Alabama law also provides for **limited conservatorships**. The limited conservator may, for example, be ordered to manage payment of living expenses of the ward, but not interfere with how the ward spends excess income. The duties of the conservator (regular or limited) are outlined in the probate court's order.

A guardianship - even a limited one - can severely affect your child's freedom and ability to make decisions about his or her own life. Once established, guardianships are often difficult to remove. If a guardianship is being considered, all parties involved should work closely together to consider some less limiting alternatives. For example, your child could give you a durable power of attorney to handle his or her health care matters. You could establish a limited bank account. Each of these options would allow you to assist your child with his or her personal affairs while allowing your child to retain some decision-making authority.

For more information about guardianships and alternatives to guardianships, contact the [Alabama Disabilities Advocacy Program](#) (ADAP), [Legal Services of Alabama](#), or the [Alabama Bar Association](#).