MO GUARDIANSHIP: UNDERSTANDING YOUR OPTIONS & ALTERNATIVES

A RESOURCE GUIDE

helping you understand how to:

- BALANCE SUPPORT & PROTECTION with autonomy and self-determination.
- IDENTIFY OPTIONS AND ALTERNATIVES
- ACCESS ALTERNATIVES TO GUARDIANSHIP as well as accessing Missouri courts to pursue your guardianship options.

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A University Center for Excellence in Developmental Disabilities

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MO Guardianship:
Understanding Your Options & Alternatives

2nd Edition

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How to use this Resource Guide

This Resource Guide was originally developed to support the *MO Guardianship: Understanding Your Options & Alternatives* training program. It is intended to help guide you through the process of determining what the most appropriate and least restrictive options and alternatives are to plenary or full guardianship for your unique circumstance. It addresses common concerns, misperceptions, myths, and provides guidance for addressing the potential needs for support and/or protection of people with developmental disabilities, mental illness, and age or illness related cognitive issues. It is for general information only. It is not legal advice. The information provided is based on Missouri law at the date of publication, as well as the experiences and knowledge of individuals who have researched and/or provided input during its development.

This guide is organized in three (3) topic areas, followed by a conclusion which provides a list of "key points" related to important information, frequently asked questions, and additional resources:

I. Balancing Support and Protection with Autonomy and Self-Determination. This section discusses the importance of promoting independence, dignity and freedom of choice when supporting individuals with developmental disabilities, mental illness, and age or illness related cognitive issues, in the decision making process.

II. Identifying Alternatives to Guardianship. This section provides an understanding of what guardianship is, what you need to know before pursuing a guardianship, how to determine whether someone needs support and/or protection, and what the options and alternatives are to guardianship.

III. Accessing Your Guardianship Options & Alternatives. This section provides direction for how to access alternatives to guardianship, file for a limited or full guardianship, eliminate or reduce guardianship status, and finding an attorney.

READ THIS GUIDE if you want to:

- explore options and alternatives to guardianship,
- find the least restrictive way(s) to provide a person with the care, support, and protection he or she needs,
- learn how to help protect an individual's right to make decisions about his or her life.

SHARE THIS GUIDE with everyone involved in the decision making process about providing support or protection for yourself or someone you care about.

INTRODUCTION to MO Guardianship: Understanding Your Options & Alternatives

Why are *you* thinking about guardianship or other needs for support and/or protection?

Jodi and her husband first began exploring options and alternatives to guardianship for their son, Matt, after receiving a letter from his school advising them to do so.

You will want to gather all of the facts that will help you make an informed decision about whether guardianship is the best choice.

There are a lot of reasons why you might be considering guardianship options and alternatives for decision making support and/or protection. For example:

- You have a child with a developmental disability about to reach the age of 18.
- A family member with mental illness is having difficulty with choices or decisions
- A family member is experiencing cognitive or decision making challenges due to aging or illness.
- You have been told by an educator, service provider or other professional that you need guardianship to maintain your rights to provide support and/or protection for someone you care about.
- Someone is pressuring you to file for guardianship.
- You are worried about your well-being or the well-being of someone you care about.
- You or someone you know is, or is at risk for, being taken advantage of by others.
- You have fears and concerns in relation to your current guardianship status.
- You currently have a guardian, but don't think you need one, or you don't agree with the decisions being made for you.
- The individual you are concerned about currently needs protection or assistance or is experiencing a difficult time

Before pursuing guardianship in response to some of the examples provided on the previous page, you may want to consider whether guardianship will achieve the outcome you desire. Guardianship is not a quick fix. It is a legal action that limits or denies a person the right to make their own decisions. It is important to determine where an individual's needs are for support and/or protection and then ask yourself, "How will having a guardian address each specific need?"

All adults are presumed competent to make choices about their lives. Simply because a person has a developmental disability, mental illness, or age/illness related issues, is not a reason to assume the person cannot make decisions. Sometimes, because of limited cognitive or communication skills, a person may need help making decisions. In these cases, when other alternatives have been explored or exhausted, an advocate or guardian may be beneficial.

What *is* Guardianship?

A guardianship is created when a person (a "guardian") has been appointed by a court to have the care and custody of a minor or an adult person (a "ward") who has been legally determined to be **incapacitated**. As defined by Missouri law,

> **"an incapacitated person is one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he [or she] lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur."** [1] *~ Missouri Revised Statutes , Chapter 475*

Plenary or "Full" Guardianship creates a substitute decision maker who may determine for you or someone you care about including, but not limited to:

- where to live
- whether or not to marry
- whether or not to work
- how to spend income
- with whom to associate
- whether or not to seek medical care and who your provider will be
- whether or not to vote
- whether or not to enter into a contract

[1] The Missouri Bar. http://mobar.org

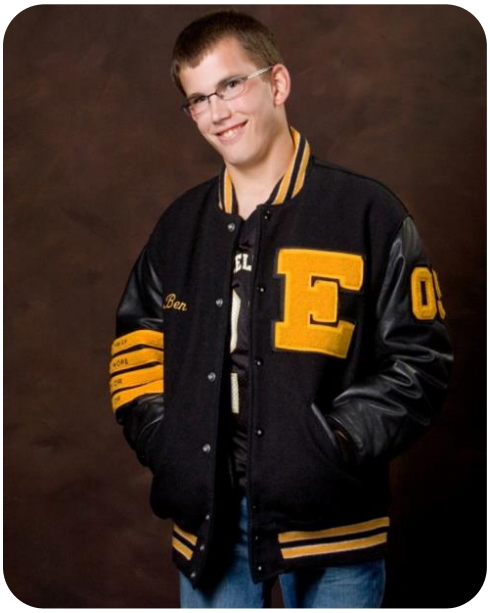
Why Is Understanding Your Options & Alternatives Important?

Understanding your guardianship options and alternatives will help you to make informed decisions and find the least restrictive way(s) to provide an individual with the care, support, and protection he or she needs.

It is not uncommon for guardianship to be suggested for individuals who need help with regular activities of daily living, such as paying bills, managing medications, or buying groceries and preparing meals.[2] Prior to seeking guardianship, however, it is important to understand the implications of guardianship and the long term affects that guardianship has on an individual's life.

When an individual is declared incapacitated for the purposes of guardianship, that individual loses many rights which are often taken for granted such as the right to vote, to obtain a drivers license, to consent or object to medical care or to enter into contracts like marriage or home ownership.

Individuals who have a guardian may not get to decide where they live, who they live with, where they may go in the community or how their money is spent. The freedom to make these decisions plays an important part in defining all of us as human beings and determining our quality of life.



It was important to Ben, as well as his family, that he be included in making decisions about what options and alternatives were most appropriate for his unique circumstance.

Since guardianship involves the loss of fundamental rights, it should be considered only when a person:

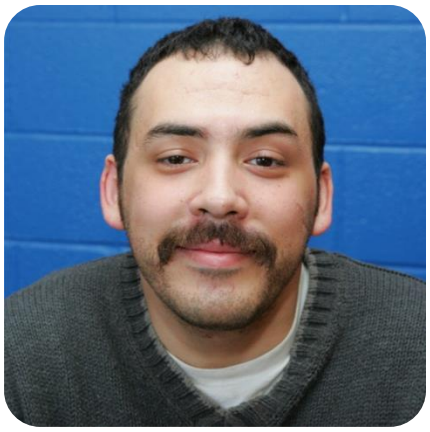
1) cannot make informed decisions on their own, or
2) cannot make informed decisions with accommodations or support in their decision making.

[2] *A Guide to Understanding Adult Guardianship and Guardianship Alternatives in Maine.*

There is no single correct answer for all families and/or individuals considering options and alternatives for support and protection.

Different individuals have different situations, needs, and available supports. Deciding what alternative(s) or guardianship options will work best in your unique circumstance can be a complex and difficult decision. Each alternative to full guardianship has its advantages and disadvantages, which must be considered.

Sometimes, even when a parent or loved one would otherwise choose an alternative to guardianship for support and protection of an individual, there are circumstances where in order to protect a person's rights, they will choose a guardianship option to make sure that continuing care is provided for that individual by having the legal authority that is being required by a particular service provider or system. However, it is important to remember that guardianships can be very difficult to modify or terminate.



If we are to promote independence, dignity and freedom of choice among persons with developmental disabilities, then guardianship needs to be considered only as an action of last resort.[3]

[3] http://springfield.mo.networkofcare.org

I. Balancing Support and Protection with Autonomy and Self-Determination

"Every person can make choices and has a right to make decisions. People who have a cognitive or intellectual disability may express those choices/decisions in non-traditional ways. Any legal system or proceeding which deprives an individual of her/his right to be accommodated and supported in choosing and making decisions and which appoints a substitute decision maker based on tests of competence, makes that person vulnerable and deprives him/her not only of his/her right to self-determination but also of other rights which should be inalienable." ~ *Don Hoyle, Arc of Michigan*

Keeping in mind that the freedom to make decisions defines all of us as human beings and plays an important part in determining our quality of life, ask yourself, "What kinds of decisions do I make every day that I value the freedom to make for myself?"

In order to promote independence, dignity and freedom of choice, it is important to remember that all adults are presumed competent to make choices about their lives. Simply because a person has a developmental disability, mental illness or is aging is *not* a reason to assume the person cannot make decisions. Sometimes, because of limited cognitive or communication skills, a person may simply need help with making decisions.

It is important that you find the least restrictive way(s) to provide an individual with the decision making support and protection that he or she needs. Balancing an individual's needs for support and protection while allowing them to maintain their autonomy and self-determination, is key to their ability to live a fulfilling and productive life.

"What kinds of decisions do I make every day that I value the freedom to make for myself?"

They may be as simple as the following:

- What you wear
- What you eat
- What time you get up in the morning or go to bed at night
- Where or with whom you live
- Who your friends are
- When and where you may go in your community
- How your money is spent

They can also be significant, such as the following:

- The right to vote or obtain a driver's license
- The ability to consent or object to medical care
- The ability to enter into contracts like marriage or home ownership

What do "autonomy" and "self-determination" mean?

Autonomy: The word "autonomy" refers to the right of a person to make informed decisions about what happens to him or her, such as the choice of whether to consent, refuse to consent, withdraw consent, or otherwise exercise freedom of choice in determining one's own actions and activities.

Self-determination: Self-determination refers to people making choices and decisions based on their own preferences and interests, to monitor and regulate their own actions, and to be goal-oriented and self-directing.

The DD Act[4] states the actions of an individual with developmental disabilities are self-determined when the person, with assistance: (a) has the ability and opportunity to make choices and decisions, (b) has the ability and opportunity to exercise control over services, supports, and other assistance, (c) has the authority to control resources and obtain needed services, (d) has the opportunity to participate and contribute to their communities, and (e) has the support, including financial, to advocate, develop leadership skills, become trained as a self-advocate, and participate in coalitions and policy-making.

Self-determination provides the individual with the FREEDOM and opportunity to make choices and decisions about all important aspects of one's life with freely chosen supports, as needed. It also gives the individual the ability to organize the SUPPORT or assistance they need in ways that are unique to the individual. The individual is provided opportunities to practice RESPONSIBILITY, contribute to one's community, and act as a citizen. Self-determination EMPOWERS individuals because the supports and protections focus on the desires and abilities of the individual. Self-determination actively INVOLVES the individual in the decisions being made about appropriate levels of support and protection for that individual's unique needs with a support group/team of family members, friends, and professionals. Finally, self-determination ensures that protections and supports are RESPECTFUL of the individual.

[4] http://acf.hhs.gov/programs/add/ddact/DDACT2.html

What is person-centered decision making?

Person-centered planning[5] and/or decision making is the key component in helping a person maintain a sense of autonomy and self-determination by **focusing on the desires and abilities of the individual.**

It was important to Ben and his family that he be involved in identifying areas in which he may need assistance and support. For Ben and his family, guardianship was too restrictive of an option.

It involves a support group/team of family members, friends, professionals and *most importantly*, the individual. **The individual chooses the members.**

Person-centered decision making recognizes that some individuals may communicate choices, wishes, likes and dislikes in non-traditional ways, which can include actions rather than language. Friends, family members, or others who are trusted by the individual, can help to interpret these decisions.[6]

The individual plays an important role in identifying areas in which the individual may need assistance and support and in deciding how the team or support group can meet those needs.

Why should you consider exploring options and seeking alternatives to guardianship?

Full guardianship can take away an individual's basic rights to make choices about his or her life and can be very difficult to modify or terminate. Under a full guardianship, a person may not be able to choose even the simplest things, such as where to live, what to eat or wear, how to spend their time, whether or not they're able to work, who is providing their personal and/or medical services, what kind of services are being provided, or with whom to have relationships.

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[5] UMKC Institute for Human Development. http://accessliving.org

[6] MAINTAINING AND ACHIEVING LEGAL AUTONOMY. The Arc of Michigan. A*n adaptation of the "Statement of Principles" by the Coalition on Alternatives to Guardianship".* michigan.gov

Under a guardianship, a person may not be allowed to access money, spend money, or save money. Why is that important? The controller of the money becomes a substitute decision maker for nearly every aspect of an individual's life.

It is important to determine where an individual's needs are for support and/or protection and then ask yourself, "how will having a guardian address each specific need?"

Guardianship is not a quick fix.

Guardianship is a legal action that limits or denies a person their civil rights. Remember, **having a guardian does not necessarily prevent an individual from making poor decisions.** It does, however, take away that individual's basic right to make choices about his or her own life, and learn from the choices they may make.

> While **individuals may retain some rights under a *limited* guardianship**, it is worth noting that most guardians in Missouri have full guardianships over their wards (the individual).
>
> **In the most ideal situation, a guardian is selected by the individual and then appointed by the court.** Missouri law, however, also provides for a court-appointed county public administrator who often has no previous knowledge of the individual's family history, background, desires, needs, abilities or interests.

There is also wide variability throughout the state in the background and experience of the public administrators, the method of payment, the additional functions they perform, their individual caseloads, and experience as substitute decision makers. According to a 2005 study on public guardianship, funding in Missouri "is uneven and patently insufficient, resulting in sometimes dangerously high caseloads."[7]

Since guardianship involves the loss of fundamental rights, it should be considered only when a person cannot make informed decisions on their own or when accommodated and/or supported in their decision making.

[7] Wards of the State: A National Study of Public Guardianship. April 2005. http://abanet.org

II. Identifying Alternatives to Guardianship

What do you need to know *before* pursuing a full guardianship?

Family members do not need to become guardians of their loved one in order to stay involved. Guardianship does not directly address the basic support needs of an individual, it only provides a legal means for someone to make decisions for a person who has been determined to be unable to make decisions on their own.

Options and alternatives should not be based on an individual's diagnostic label, but rather on an individual's strengths and specific decision making and protection needs.

If the individual does require guardianship, the least restrictive option should be considered first.

The Missouri statutes recognize that individuals may be *partially* incapacitated. In other words, an individual may be perfectly able to make decisions in one area of life, while needing significant support in another. For example, an individual may be able to handle small amounts of money, dress herself and cook simple meals but may be unable to properly take medication or understand what happens at doctor's visits.

If it is determined by those who know and care about the person that the only alternative is guardianship, then limited guardianship should ALWAYS be considered first. With limited guardianship, the individual retains certain legal rights and freedoms that may directly impact quality of life.[8]

Tom (above) lives in his least restrictive environment, with a roommate. In 2008, Tom received the American Red Cross' Adult Heart of a Hero Award for using his CPR skills to save his roommate's life when he discovered he was choking.

There are ways other than guardianship to provide support and protection for an individual, and to establish decision making supports in certain areas, such as health care and finances.

[8] http://springfield.mo.networkofcare.org/dd/resource/programs_link.cfm

If an individual only needs assistance with financial issues, then you should consider conservatorship, which gives someone control only over the financial affairs. For more information on conservatorship, visit the Missouri Bar website at mobar.org.

Alternatives to full guardianship include general supports (family, friends, and community resources), legal documents (such as Power of Attorney or a Living Will), advocacy organizations, and money management supports. These alternatives allow individuals to hold on to some or all of their decision making rights. Each alternative to guardianship has advantages and disadvantages, which will need to be addressed in each individual's unique circumstance.

Learning about alternatives may take effort on your part, but they may allow an individual to keep more of their legal rights and stay involved in decisions about their own lives.

How do you know if you or someone you care about needs decision making support and/or protection?

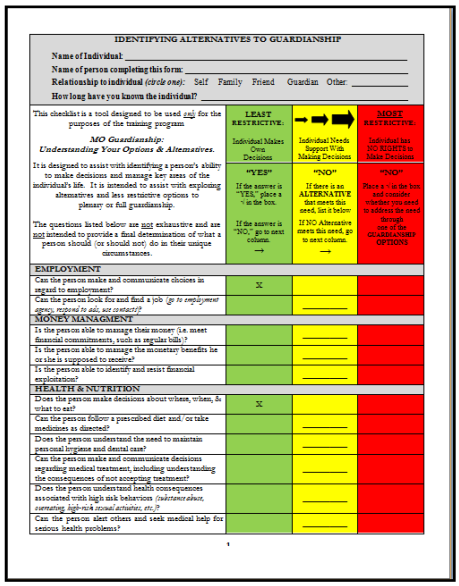
The first step is to determine what level of ability the individual has with regard to key areas of his/her life. Start by filling-out the checklist found in APPENDIX 1 (p 32): Identifying Alternatives to Guardianship ("the tool"). The tool is also available at mofamilytofamily.org.

About the "tool"

An individual's level of ability is sometimes viewed differently by different people who have interacted with the individual in different situations or environments. For this reason, and to get a broader perspective of an individual's ability, this checklist should be filled out by several members of the individual's support group/team of family members, friends, professionals and *most importantly*, the individual. This will be helpful in most accurately determining if there is an appropriate option or alternative that meets the individual's needs for support and/or protection.

The tool will also be a helpful resource in assisting your attorney with understanding and explaining an individual's specific areas of need to the court, if a limited guardianship is considered.

In each of the key areas of an individual's life listed on the checklist, there are a series of questions. Start by simply answering "Yes" or "No." If the answer is "Yes," you will place a mark in the green column and move-on to the next question. If the answer is "No" or if the individual needs support with making decisions in regards to a question, you will place a mark in the yellow column and move-on to the next question. There should be no marks in the red column until after all questions have been answered.



IDENTIFYING ALTERNATIVES TO GUARDIANSHIP

Name of Individual: _____

Name of person completing this form: _____

Relationship to individual *(circle one)*: Self Family Friend Guardian Other: _____

How long have you known the individual? _____

This checklist is a tool designed to be used *only* for the purposes of the training program *MO Guardianship: Understanding Your Options & Alternatives.* It is designed to assist with identifying a person's ability to make decisions and manage key areas of the individual's life. It is intended to assist with exploring alternatives and less restrictive options to plenary or full guardianship. The questions listed below are not exhaustive and are not intended to provide a final determination of what a person should (or should not) do in their unique circumstances.	LEAST RESTRICTIVE: Individual Makes Own Decisions "YES" If the answer is "YES," place a 'x' in the box. If the answer is "NO," go to next column. →	➡ ➡ ➡ Individual Needs Support With Making Decisions "NO" If there is an ALTERNATIVE that meets this need, let it below. IF NO Alternative meets this need, go to next column. →	MOST RESTRICTIVE: Individual has NO RIGHTS to Make Decisions "NO" Place a 'x' in the box and consider whether you need to address the need through one of the GUARDIANSHIP OPTIONS
EMPLOYMENT			
Can the person make and communicate choices in regard to employment?	X		
Can the person look for and find a job *(go to employment agency, respond to ads, see to search)*?		_____	
MONEY MANAGMENT			
Is the person able to manage their money (i.e. meet financial commitments, such as regular bills)?		_____	
Is the person able to manage the monetary benefits he or she is supposed to receive?		_____	
Is the person able to identify and resist financial exploitation?		_____	
HEALTH & NUTRITION			
Does the person make decisions about where, when, & what to eat?	X		
Can the person follow a prescribed diet and/or take medicines as directed?		_____	
Does the person understand the need to maintain personal hygiene and dental care?		_____	
Can the person make and communicate decisions regarding medical treatment, including understanding the consequences of not accepting treatment?		_____	
Does the person understand health consequences associated with high risk behaviors *(substance abuse, overeating, high-risk sexual activities, etc.)*?		_____	
Can the person alert others and seek medical help for serious health problems?		_____	

The questions listed on "the tool" and pages that follow are not exhaustive and are not intended to provide a final determination of what a person should (or should not) do in their unique circumstance.

The following questions are intended to assist with identifying a person's ability to make decisions and manage key areas of the individual's life. Adding to, deleting, adapting, and/or making your own individual list to ensure you address all areas of concern in an individual's unique circumstance, is encouraged.

Employment

- Can the person make and communicate choices in regard to employment?
- Can the person look for and find a job (*go to employment agency, respond to ads, use contacts*)?

Money Management

- Is the person able to manage their money (*i.e. meet financial commitments, such as regular bills*)?
- Is the person able to manage the monetary benefits he or she is supposed to receive?
- Is the person able to identify and resist financial exploitation?

Health & Nutrition

- Does the person make decisions about where, when, & what to eat?
- Can the person follow a prescribed diet and/or take medicines as directed?
- Does the person understand the need to maintain personal hygiene & dental care?
- Can the person make and communicate decisions regarding medical treatment, including understanding the consequences of not accepting treatment?
- Does the person understand health consequences associated with high risk behaviors *(substance abuse, overeating, high-risk sexual activities, etc.)*?
- Can the person alert others and seek medical help for serious health problems?

Relationships

- Can the person differentiate appropriate relationship behaviors as with family, friends, co-workers, intimate partners, etc. (*how we talk to and touch others*)?
- Is the person able to make appropriate decisions concerning marriage & intimate relationships?
- Does the person understand consent and permission in regard to sexual relationships?

Personal Safety

- Does the person avoid common environmental dangers (*traffic, sharp objects, hot stove, poisonous products, etc.)?*
- Is the person able to recognize when someone is taking advantage of them, hurting them, or abusing them (*physical, sexual, emotional*) and protect themselves?
- Does the person know who to contact if they are in danger, being exploited, or being treated unfairly (*family, police, MO Protection & Advocacy, DSS, Arc, Lawyer*)?

Community Living

- Is the person able to be on their own without risk of serious harm or injury to themselves?
- Does the person understand what is involved with managing a home that is safe *(home maintenance, sanitary conditions, secure, etc.)?*
- Is the person able to access community resources critical to functioning successfully and safely in community settings (*post office, transportation, bank, grocery store, emergency services, church, etc.)*?

Personal Decision Making

- Is the person able to understand and communicate consent and/or permissions regarding legal documents (*i.e., contracts, powers of attorney*) or services (*i.e., legal counsel, advocacy services*)?
- Is the person able to identify someone they want to represent their interests and support them with decision making?
- Does the person demonstrate the ability to vote?
- Does the person understand consequences of making decisions that will result in them committing a crime *(reads or listens to the news, meets office holders, expresses opinions about current events, etc.)*?

Determining & Directing Services and Supports

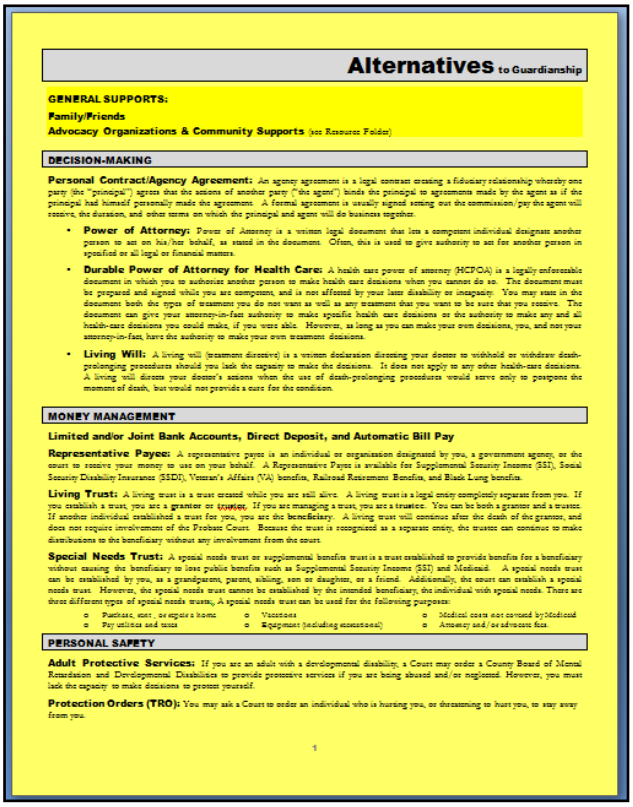
- Is the person able to decide and direct what kinds of assistance or support they need or want and select who provides those supports?
- Is the person able to communicate approval to share information with parents, family members, and friends who are not legal guardians?

Remember, guardianship involves the loss of fundamental rights, so it should be considered only when a person cannot make informed decisions on their own or when accommodated or supported in their decision making.

So, *now* what?

Once you've completed the entire checklist, you will return to each section of "the tool" to review any marks in the yellow column and take some time to look at your list of **Options & Alternatives** (APPENDIX 2, p34) to determine if there is an appropriate alternative that meets that need. This list is also available at mofamilytofamily.org

You will *only* place a mark in the red column if **NO** alternative meets that need. Marks in the red column indicate that you may need to consider one of the guardianship options *(limited or full/plenary guardianship*) to address that specific need.



Alternatives to Guardianship

GENERAL SUPPORTS:

Family/Friends

Advocacy Organizations & Community Supports (see Resource Folder)

DECISION-MAKING

Personal Contract/Agency Agreement: An agency agreement is a legal contract creating a fiduciary relationship whereby one party (the "principal") agrees that the actions of another party ("the agent") binds the principal to agreements made by the agent as if the principal had himself personally made the agreement. A formal agreement is usually signed setting out the commission/pay the agent will receive, the duration, and other terms on which the principal and agent will do business together.

- **Power of Attorney:** Power of Attorney is a written legal document that lets a competent individual designate another person to act on his/her behalf, as stated in the document. Often, this is used to give authority to act for another person in specified or all legal or financial matters.
- **Durable Power of Attorney for Health Care:** A health care power of attorney (HCPOA) is a legally enforceable document in which you to authorize another person to make health care decisions when you cannot do so. The document must be prepared and signed while you are competent, and is not affected by your later disability or incapacity. You may state in the document both the types of treatment you do not want as well as any treatment that you want to be sure that you receive. The document can give your attorney-in-fact authority to make specific health care decisions or the authority to make any and all health-care decisions you could make, if you were able. However, as long as you can make your own decisions, you, and not your attorney-in-fact, have the authority to make your own treatment decisions.
- **Living Will:** A living will (treatment directive) is a written declaration directing your doctor to withhold or withdraw death-prolonging procedures should you lack the capacity to make the decisions. It does not apply to any other health-care decisions. A living will directs your doctor's actions when the use of death-prolonging procedures would serve only to postpone the moment of death, but would not provide a cure for the condition.

MONEY MANAGEMENT

Limited and/or Joint Bank Accounts, Direct Deposit, and Automatic Bill Pay

Representative Payee: A representative payee is an individual or organization designated by you, a government agency, or the court to receive your money to use on your behalf. A Representative Payee is available for Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Veteran's Affairs (VA) benefits, Railroad Retirement Benefits, and Black Lung benefits.

Living Trust: A living trust is a trust created while you are still alive. A living trust is a legal entity completely separate from you. If you establish a trust, you are a **grantor** or trustor. If you are managing a trust, you are a **trustee**. You can be both a grantor and a trustee. If another individual established a trust for you, you are the **beneficiary**. A living trust will continue after the death of the grantor, and does not require involvement of the Probate Court. Because the trust is recognized as a separate entity, the trustee can continue to make distributions to the beneficiary without any involvement from the court.

Special Needs Trust: A special needs trust or supplemental benefits trust is a trust established to provide benefits for a beneficiary without causing the beneficiary to lose public benefits such as Supplemental Security Income (SSI) and Medicaid. A special needs trust can be established by you, as a grandparent, parent, sibling, son or daughter, or a friend. Additionally, the court can establish a special needs trust. However, the special needs trust cannot be established by the intended beneficiary, the individual with special needs. There are three different types of special needs trusts. A special needs trust can be used for the following purposes:

- Purchase, rent, or repair a home
- Pay utilities and taxes
- Vacations
- Equipment (including entertainment)
- Medical costs not covered by Medicaid
- Attorney and/or advocate fees

PERSONAL SAFETY

Adult Protective Services: If you are an adult with a developmental disability, a Court may order a County Board of Mental Retardation and Developmental Disabilities to provide protective services if you are being abused and/or neglected. However, you must lack the capacity to make decisions to protect yourself.

Protection Orders (TRO): You may ask a Court to order an individual who is hurting you, or threatening to hurt you, to stay away from you.

1

What *are* the Options and Alternatives?

ALTERNATIVES to Guardianship *may* allow individuals to hold on to some or all of their rights. Consider the following:

1. **General Supports:** These are natural, unpaid, and community resources. You should start researching your alternatives by exploring how family, friends, and community resources can be engaged to help an individual live most independently. Keep in mind that often times, all you have to do is ask someone…often **people *want* to help, they just need to know *how* they can.**

   - **Family/Friends**
   - **Advocacy Organizations** (such as MOF2F, MO P&A, and SOS)
   - **Community Supports** (such as Meals on Wheels, charitable, social, school, and religious organizations, as well as community organizations such as Big Brothers/Big Sisters, etc.)
   - **Case Management Services**

   Make a list of "general supports." This includes *only* unpaid supports such as family, friends, advocacy organizations, and community supports in an individual's life. Think creatively and keep an open mind.

   Remember, an individual's circumstances and support systems change. You will need to revisit solutions and make adjustments as the individual's condition improves and/or deteriorates.

2. Decision Making Supports: These are alternatives to guardianship which create legal documents, such as Power of Attorney, that allow individuals to hold on to some or all of their rights, but provide decision making support by giving the authority to another individual to make decisions and act on behalf of the individual for such things as healthcare, education, money management, and entering into contracts.

   - Personal Contract/Agency Agreement: An agency agreement or personal contract is a document creating a legal relationship of confidence or trust between two or more parties whereby one party (the "principal") agrees that the actions of another party ("the agent") binds the principal to agreements made by the agent as if the principal had himself personally made the agreement. A formal agreement is usually signed setting out the commission/pay the agent will receive, the duration, and other terms on which the principal and agent will do business together. You may want to execute a personal contract in front of witnesses and/or a notary. *Note:* A personal contract or agency agreement can be terminated at any time.

   - Power of Attorney: A general Power of Attorney is a written legal document that lets a competent individual designate another person to act on his/her behalf, as stated in the document. Under Missouri law, it is possible to have a "general" power of attorney which authorizes the agent to act for the principal on every kind of subject or matter which may legally be handled through an agent, with certain specific exceptions. However, it is still recommended that the power of attorney include as much detail as possible.

     Often, Power of Attorney is used to give authority to act for another person in specified or all legal or financial matters. More information on Power of Attorney can be found on the Missouri Bar website at mobar.org under Public/Information Brochures/Probate Law Resource Guide.

   - Durable Power of Attorney for Health Care: A Durable Power of Attorney for Health Care is a legally enforceable document in which you authorize another person to make health care decisions when you

cannot do so. The document must be prepared and signed while you are competent, and is not affected by your later disability or incapacity.

You may state in the Durable Power of Attorney for Health Care both the types of treatment you do not want as well as any treatment that you want to be sure that you receive. The document can give your attorney-in-fact (the person you designate) the authority to make specific health care decisions or the authority to make any and all health-care decisions you could make, if you were able. However, as long as you can make your own decisions, you, and not your attorney-in-fact, have the authority to make your own treatment decisions.

More information and sample forms for Durable Power of Attorney for Health Care can found under the Probate Law Resource Guide in the section of information for the general public on the Missouri Bar's website at mobar.org.

Meet MRS. SIMMS*

Mrs. Simms is an 84 year old widow whose physical health is beginning to fail. With the assistance of her daughter, Emma, they explore alternatives for her to prepare for the future while avoiding guardianship. By searching the online resource information found at the MO Seniors Legal HelpLine and the MO Bar, they discover that a **Durable Power of Attorney (DPOA) for Health Care** will allow Emma to carry out her mother's treatment wishes should Mrs. Simms become unable to do so. After consulting with an attorney, Mrs. Simms decided to also establish a DPOA for Finances to enable her daughter to handle all financial matters should Mrs. Simms become mentally or physically incapable of addressing her finances. Mrs. Simms' attorney advised some method of accountability of the agent's activities be built into this DPOA. He explained that directing oversight or monitoring helps to prevent the opportunity for financial exploitation to occur. While Mrs. Simms had no concerns about her daughter's integrity or devotion, the attorney explained that this would serve to protect Emma as well as Mrs. Simms herself. The DPOA for Health Care and for Finances permitted Mrs. Simms to plan for her future care and avoid guardianship or conservatorship.

*this scenario is a composite of several different individual situations and Mrs. Simms is a fictitious name

- **Living Will:** A living will (treatment directive) is a written declaration directing your doctor to withhold or withdraw death-prolonging procedures should you lack the capacity to make the decisions. It does not apply to any other health-care decisions.

  A living will directs your doctor's actions only when the use of death-prolonging procedures would serve only to postpone the moment of death, but would not provide a cure for the condition. . More information about Living Wills can be found on the Missouri Bar website at mobar.org under Public/Information Brochures/Probate Law Resource Guide.

- **Advance Directives:** An Advance Directive is used in place of a living will when you want to give more detailed instructions than can be provided in the living will. Advanced Directives are instructions you can give about withholding or withdrawing certain medical treatments. These instructions allow you to make your wishes known before a time that you might suffer an illness or injury that would prevent you from being able to state your decisions or refuse treatment. More information about Advance Directives can be found at the Mo Seniors HelpLine website at www.moaging.com/legalhelp.

3. **Money Management Supports**: Money management supports help manage financial obligations and avoid financial exploitation. Using these alternatives may also provide opportunity for individuals to learn money management skills and take-on more responsibility for managing personal finances.

   - **Limited and/or Joint Bank Accounts, Direct Deposit, and Automatic Bill Pay:** Most banking institutions can help you to set-up Limited and/or Joint Bank Accounts, Direct Deposit, and Automatic Bill Pay to help ease concerns about money management. To assist with concerns about financial exploitation, you may find it helpful to also make use of debit cards that allow an individual to make purchases much like a credit card with a PIN (v. cash), pour-over accounts to prevent overdrafts, dual-signature checking, and pre-set withdrawal limits. Your local bank can help you get set-up with these supports.

NOTE: If individuals are recipients of Social Security benefits, they must be aware of resource limits, etc., that can affect their benefits. In general, it is not wise to mingle funds of others in an account for the use of a beneficiary.

- **Representative Payee:** A representative payee is an individual or organization designated by you, a government agency, or the court to receive your money to use on your behalf. A Representative Payee is available for Supplemental Security Income (SSI), Social Security Disability Insuranc e (SSDI), Veteran's Affairs (VA) benefits, Railroad Retirement Benefits, and Black Lung benefits. Information about the Representative Payee Program can be found at http://www.ssa.gov/payee .

- **Living Trust**: A living trust is a trust created while you are still alive. A living trust is a legal entity completely separate from you. If you establish a trust, you are a **grantor** or **trustor**. If you are managing a trust, you are a **trustee**. You can be both a grantor and a trustee. If another individual established a trust for you, you are the **beneficiary**.

  A living trust will continue after the death of the grantor, and does not require involvement of the Probate Court. Because the trust is recognized as a separate entity, the trustee can continue to make distributions to the beneficiary without any involvement from the court. Many parents use this option to allow their assets to be designated upon their death.

Meet BEN

Ben uses both **General Supports** and **Money Management Supports.**

Ben lives with his family and attends public high school full time where he is mostly included with his same age typical peers. Ben doesn't learn at the same pace as others his age, so his work is adapted and modified as needed, and he is assisted by an aide throughout the school day. Ben is a very well-known individual in his school and in the community in which he lives. He has mainly been supported outside of school by family, but that changed when his twin brother went off to college in the fall.

Guardianship became an important issue as he approached his 18th birthday and his parents received "the letter" from the school telling them they should get guardianship or they wouldn't have any input in educational decisions. They were also concerned about medical treatment and management of Ben's finances.

For Ben and his family, guardianship was too restrictive of an option. By simply asking for help from friends, family, and community members, Ben is being supported during afterschool activities, learning new life-skills that help him to be more independent in the community, and learning to use such things as debit cards and limited bank accounts to help him better manage his money.

- **Special Needs Trust:** A special needs trust or supplemental benefits trust is a trust established to provide benefits for a beneficiary without causing the beneficiary to lose public benefits such as Supplemental Security Income (SSI) and Medicaid.

  A special needs trust can be established by you, as a grandparent, parent, sibling, son or daughter, or a friend. Additionally, the court can establish a special needs trust. However, the special needs trust cannot be established by the intended beneficiary, the individual with special needs.

  Money from special needs trusts cannot be used to provide basic necessities, such as food, clothing, and shelter for which public benefits are provided, without endangering the benefit eligibility. For example, special needs trust can be used for purchasing, renting or repairing a home, taking vacations, medical costs not covered by Medicaid, attorney and/or advocate fees, and so forth.

Meet ERIC...

The **Special Needs Trust** that Eric's parents created for him when he was 18 years old did two things: it set up a fund that would give Eric the ability to purchase things that would enhance his life when they were gone, and it gave them the peace of mind to know that Eric's financial support would not become a burden on his brothers and sister. These funds, once his parents have passed away, will give Eric the ability to continue doing the things he currently loves; like visiting his siblings in another part of the state, going to stock car races or buying a new golf-cart to replace his old one. These funds would cover expenses for his home and to cover services that might not be covered with his current supports and benefits.

4. **Personal Safety Supports:** Personal safety supports can be useful for individuals with developmental disabilities if they are at risk for being abused or neglected by an intimate partner, spouse, other family member, personal assistant, or caregiver.

   - **Adult Protective Services:** The Missouri Department of Health & Senior Services (DHSS) investigates abuse, neglect and exploitation and provides protective services to vulnerable persons 60 and older and people with disabilities between 18 and 59, living in the community or in a long-term care facility, who are unable to protect their own interests or adequately perform or obtain necessary services to meet their essential needs. If you, or someone you know, is being abused, neglected or exploited, contact the Department's Abuse/Neglect Hotline at 1-800-392-0210. The hotline is available 365 days a year from 7 a.m. to midnight. Hearing impaired persons may call the TDD at 1-800-735-2466 or 1-800-735-2966 to utilize Relay Missouri. More information is available on the DHSS website at: http://health.mo.gov/seniors/abuse.php.

   - **TRO (Temporary Restraining Order)/Protection Orders**: You may fill out a form at your County Court Clerk's office to ask a Court to order an individual who is hurting you, or threatening to hurt you, to stay away from you.

You are encouraged to identify a person and/or agency that can help you sort through the supports and resources identified above.

This person might be a caseworker, social service agency staff member, attorney, or a MO Protection & Advocacy staff member. This person can help you understand the decision making, money management, and personal safety alternatives suggested on the list of options & alternatives and work with you to create a list of support and protection options that will address the individual's specific needs. You may also consider consulting with a financial planner or estate planner who can help advise family members on ways to financially provide for an adult with a developmental disability.

Guardianship OPTIONS

1. **Limited Guardianship:** Under a **Limited Guardianship,** a guardian has control over *some* but not all areas of an individual's life. For instance, if you do not have the capacity to understand the implications of your health care decisions, the court may appoint a guardian for medical purposes only. The guardian would then make all of your health care decisions, including which doctor to see, which treatments to follow, and whether or not to accept life-sustaining treatment. Limited guardianships may also be appointed for: placement, medication, behavior plans, and paying bills. It is possible to move from a limited guardianship to a full guardianship if necessary.

2. **Plenary/Full Guardianship:** Under **Full Guardianship,** a guardian has decision making control over *all* areas of an individual's life. If any right is to be preserved for an individual under a full guardianship, it must be specified in writing by the court that orders the guardianship. A plenary or "full" guardianship creates a substitute decision maker who makes decisions for the individual which may include, but is not limited to, the following:

   - where to live
   - whether or not to marry
   - whether or not to work
   - how to spend income
   - with whom to associate
   - whether or not to seek medical care
   - the right to vote
   - whether or not to enter into a contract

*For more detailed information, see Missouri Revised Statutes, Chapter 475, Probate Code – Guardianship http://www.moga.mo.gov/STATUTES/C475.HTM

III. Accessing Your Guardianship Options & Alternatives

Once you've determined an individual's areas of need and identified appropriate options and alternatives to meet those needs, you'll need to access the alternatives you've selected and/or petition the court for a limited or full guardianship or a restoration of capacity (to terminate a full/plenary guardianship or reduce it to a limited guardianship).

Historically, guardianship was an all-or-nothing proposition without regard for a person having capacity in some area of their life, but not others. The law is now beginning to recognize that the skills required for life's many decisions are not all the same…and a person may be incompetent to make one type of decision, but have capacity to make decisions in other parts of their life.

How do I access the ALTERNATIVES to guardianship?

- Build a support group.
- Practice person-centered decision making.
- Be aware that because guardianship is a court-ordered assignment, you may need to seek appropriate legal counsel.

What can you access on your own (without an attorney)?

- Friends/Family
- Community Supports
- Representative Payee
- Limited and/or Joint Bank Accounts
- Direct Deposit and Automatic Bill Pay
- Protection Orders (TRO)
- Personal Contract or Agency Agreement

What might you need an attorney to access?

- Durable Power of Attorney
- Durable Power of Attorney for Health Care
- Living Will
- Living Trust
- Special Needs Trust
- Adult Protective Services
- Limited Guardianship
- Full/Plenary Guardianship

Most of the listed alternatives you CAN do on your own. For alternatives such as trusts, wills, and limited guardianship, you are encouraged to seek professional legal advice from an attorney licensed in the state of Missouri and experienced in the area of probate law and guardianship.

How do I find an attorney?

If you decide you need or want an attorney, you'll want to **be sure to use an attorney who is experienced in the area of Missouri probate law and guardianship.** If you do not know of an attorney in your area, you can contact one of the three different lawyer referral services in the state of Missouri:[9]

1. **The Missouri Bar Lawyer Referral Service** provides referrals to attorneys on a statewide basis, except for St. Louis and Springfield (*see below*), and can be reached at: **573-636-3635**, Monday through Friday from 9 AM until Noon and then again from 1 PM until 3 PM.

   What you can expect:
   - You'll get to talk with a real person… Sometimes you need a lawyer. Sometimes you just need more information. Sometimes it's hard to know what you need. Unlike listings in the phone book or on-line searches, when you call the referral service you can visit with an experienced staff person, in complete confidence, who can help you to figure it out.
   - The staff members of The Missouri Bar cannot answer your legal questions or give you legal advice. If you need legal advice or representation, they can refer you to a lawyer who practices within the geographical area where you need a lawyer; and the kind of attorney that is appropriate for your situation. If you need information, they will do their best to direct you to appropriate resources, which may include printed material, websites, or other services or agencies.
   - They charge $25.00 (payable by debit or credit card) to refer you to an attorney and make one referral at a time. The $25.00 fee entitles you to an up-to-thirty-minute consultation with an attorney where you can get your legal questions answered and get legal advice. The attorney does not charge you for the up-to-thirty minute consultation. There is no guarantee the attorney they refer you to will take your case, and there is no obligation on your part to hire the attorney. If the attorney agrees to represent you, the attorney will charge you for his/her services at their normal, customary rates. Be sure to ask what that rate will be.
2. If you need an attorney in St. Louis, call the **St. Louis Metropolitan Bar Lawyer Referral Service at 314-621-6681.**
3. If you need an attorney in Springfield, call the **Springfield Metropolitan Bar at 417-831-2783.**

[9] The Missouri Bar. http://www.mobar.org/be4cffc9-6eea-4041-90a9-6964d8a29f51.aspx

What if I cannot afford an attorney?

Missouri Protection & Advocacy Services is a federally funded agency that protects the rights of individuals with disabilities in the state of Missouri. MO P&A is actively involved in issues related to guardianship and provides legal assistance to help individuals deal with issues relating to guardianship. MO P&A has offices across the state of Missouri. They provide no cost legal services for individuals wishing to pursue alternatives to guardianship and/or a limited guardianship. They also provide general information and referral services to callers with questions about guardianship.

Applications Unit: 573-659-067 | Relay Missouri (TDD): 1-800-735-2966
moadvocacy.org

Legal Services of Missouri

Legal aid organizations provide legal services to those who qualify based on their income. There are four legal aid programs in Missouri. The four legal aid programs in Missouri include: Legal Services of Eastern Missouri, Legal Aid of Westen Missouri, Legal Services of Southern Missouri (LSSM), and Mid-Missouri Legal Services.

Legal Aid of Western MO
lawmo.org

Central Office: (816) 474-6750
West Office: (816) 474-9868
Warrensburg: (800) 892-2943
St. Joseph: (800) 892-2101
Joplin: (800) 492-7095

Mid-MO Legal Services

Main office: (800) 568-4931

Legal Services of Southern MO
lsosm.org

Main office: (800) 444-4863

Legal Services of Eastern MO
lsem.org

Main office: (800) 444-0514

You can find more details at lsmo.org.

How will my attorney and/or legal representative best represent my interests before the court?

- Promptly notify you, your guardian, and any caretaker of his/her appointment
- Contact you, your guardian and any caretaker to review your files and all other relevant information
- Contact persons who may have knowledge about you, your needs for protection and/or support, you goals, interests, etc.
- Interview all possible witnesses
- Subpoena witnesses to the hearing, as appropriate
- File appropriate motions/petitions
- Provide the court with draft language that conveys your wishes for whom to appoint and how you would like a decision by the court to be written
- Pursue discovery of formal and informal evidence
- Review all medical reports
- Obtain independent psychological and medical examinations, as needed
- Advise you, your guardian, and any caretaker about the consequences of the proceeding
- Find out what your specific interest and desires are
- Cross-examine witnesses
- Tell the judge what you want
- Ensure that the court considers all issues concerning your unique circumstance and living situation
- Produce evidence on all relevant issues
- Represent your interests and desires, including objecting to inadmissible testimony
- Raise appropriate questions to all nominations for continued guardianship
- Take all steps to limit the scope of the guardianship to your actual needs
- Make all arguments to limit the scope of intervention

NOTE: An attorney can often assist you or your family to draw-up and file alternative arrangements, making a guardianship unnecessary.

Filing for Limited or Full/Plenary Guardianship

The Guardianship Process: There is a process in the Probate Court System in Missouri that makes guardianship appointments, whether it is a family member, Public Administrator or another person. The process involves filing papers in court, participating in a court investigation, and attending a court hearing to decide the rights to legal guardianship for a person. Guardians may be appointed on a limited basis or for just one area (*i.e. medical decisions*). [10]

In which court should the petition be filed? File with the clerk of the court in the county where the person for whom guardianship is being sought lives and include the following:

- Petition
- Form
- Cost

What information must the petition contain?

- Name/address of proposed ward (*"ward" is the person in need of a guardian*)
- Name/address of proposed ward's spouse and children
- Proposed ward's assets
- Name/address of proposed guardian
- Names of proposed guardian's other wards
- Letter of medical necessity

Who can file?

- You
- A person seeking to become a guardian, such as a parent, relative, or a caretaker
- A person who is either responsible for your care or who has assumed responsibility for your care
- A facility providing your care, like a hospital or nursing home
- An agency that provides services to you (*i.e. Department of Mental Health or Department of Social Services)*
- ANY other interested party

Can the individual go to the hearing? Yes…and he/she should. The law specifically says the individual is entitled to attend the hearing.

[10] http://springfield.mo.networkofcare.org/dd/resource/programs_link.cfm

What will the court do?

- Schedule a hearing
- Send notices
- Order medical/psychological evaluation
- Question ward/proposed guardian/witnesses

Moving from Plenary/Full Guardianship to a less-restrictive alternative

When a guardianship is revoked or reduced, the law refers to this action as a "Restoration of Competency." Petitioning to move from a plenary/full guardianship is much the same process as filing for a guardianship (*see previous section*). In order to have your capacity and/or ability restored, you will first need to 1) Notify your Guardian; and 2) Ask the court to appoint an attorney to represent you.

How does a Guardianship end? *(includes, but is not limited to the following):*

- When you turn eighteen (18), unless the guardianship was created because you have a mental or physical condition;
- Upon a finding by the Court that your capacity or ability has been restored;
- Upon the Court's revocation of your Letters of Guardianship
- Upon the Court's acceptance of your Guardian's resignation;
- Upon your death

NOTE: If you currently have a Guardian, you will need to be prepared to put on proof showing the court that your capacity or ability has been restored. Written testimony from doctors or professionals who provide services to you, stating that you are capable of providing for yourself, is helpful. In-person testimony from such "expert witnesses" demands the attention of the court and is often very persuasive.

Once a determination has been made to either appoint a Guardian and/or remove a Guardian, what will the Court do?

The court's decision is made in a court order. The order will include the following findings of fact:

- The extent of your physical and/or mental incapacity to care for yourself;
- The extent of your physical and/or mental disability to manage your finances;
- Whether or not you require placement in a supervised living situation, and, if so, the level of supervision you need; and
- Whether or not you need supervision to manage your finances, and, if so, the level of supervision you need.

Depending upon your level of incapacitation or disability as determined above, the Court will then Order:

- The appointment or continuation of a Limited Guardian, or
- The appointment or continuation of a Full Guardian

If a guardian is appointed, they will be given "Letters of Guardianship," specifying the terms of the guardianship.

Conclusion

Key points

- **Every person can make choices and has a right to make decisions** (self-determination).[11]
- **All adults are presumed competent to make choices about their lives.** Simply because a person has a developmental disability, mental illness, or aging illness related cognitive issues, is not a reason to assume the person cannot make decisions.

Patty (above), a Steering Committee representative for People First of Missouri, fulfills her life-long dream of skydiving.

- **Balancing an individual's needs for support and protection** while **allowing them to maintain their autonomy and self-determination is key** to their ability to live a fulfilling and productive life.
- It is important that you **find the least restrictive way(s) to provide an individual with the care, supervision, and support he or she needs.**[12]
- **Guardianship involves the loss of fundamental rights**, so it should be considered *only* when a person cannot make informed decisions on their own or when accommodated and/or supported in their decision making.
- **There is no single correct answer for all families and/or individuals considering guardianship**. Different individuals have different situations, needs, and available supports. You will likely still need to do additional research, consult with caseworkers and experts, and ask more questions.[13]

[11] MAINTAINING AND ACHIEVING LEGAL AUTONOMY. The Arc of Michigan. *An adaptation of the "Statement of Principles" by the Coalition on Alternatives to Guardianship".*
[12] A Guide to Understanding Adult Guardianship and Guardianship Alternatives in Maine.
[13] A Guide to Understanding Adult Guardianship and Guardianship Alternatives in Maine.

Frequently Asked Questions

When is a plenary/full guardianship appropriate? A plenary/full guardianship is appropriate *only* after you have determined an individual's specific areas of need, researched the alternatives, and ruled out all other options.

When is a limited guardianship appropriate? A limited guardianship is appropriate where an individual wants to retain some of his or her rights, such as where to live, how to spend free time, with whom to have relationships, the ability to vote, work, and marry, etc. The decision making authority given to a limited guardian can be specific to such things as money management decisions, health care decisions, and educational decisions.

Will guardianship make an individual take medications he or she doesn't want to take, stop unwanted behaviors, or keep them out of trouble with the law? Not necessarily. Guardianship will not change the behavior of the individual. It is a legal action that gives another person the legal authority to make decisions for that individual. Remember, having a guardian does not necessarily prevent an individual from making poor decisions. It does, however, take away that individual's basic right to make choices about his or her own life, and learn from the choices they may make.

What if someone thinks I need a guardian and I don't want one? Every person has the right to fight a petition. You or your representative should appear in court or write to the court and let the court know. The court may appoint what is called a "guardian ad litem" to provide the court with an independent opinion about what is in your best interest. Remember, this individual is not *your* attorney, so you'll want to make sure the guardian ad litem knows that you do not agree with the need to have a guardian appointed, and help the guardian ad litem find and present evidence supporting your position.

In the event that the court decides I still need a guardian, do I have any say over who will be my guardian? Yes. If you already have written down your preference in a durable power of attorney or living will, this person should be the first preferred nominee for guardian. So long as you have capacity to do so, you may at any time nominate an individual to serve as your guardian. Anyone who has the capacity to form a preference may nominate his or her own guardian.

The nomination may be in writing, by an oral request to the court, or may be proved by other evidence.

Does the court have to follow my instructions and/or request for who I want to be my guardian? Not necessarily. The final decision rests with the court. If you have already written down your preference in a durable power of attorney, living will, or other signed and witnessed document expressing your wishes, the court will appoint your nominee if it determines that he or she is eligible to act and would serve in your best interest. The person named by the court must agree to be the guardian.

While this Resource Guide has provided an introduction to many of the things you will need to know about Missouri guardianship, options, and alternatives, you will likely still need to do additional research, consult with caseworkers and experts, and ask more questions.

Additional help and information

Deciding what alternative(s) or guardianship options will work best in your unique circumstance can be an overwhelming and complex process. **It is important to remember that ongoing, no-cost, additional help and information is available through the resources listed below.**

Missouri Family to Family: Missouri Family to Family (MOF2F), located at the UMKC Institute for Human Development, provides a network of support options, including information, peer support, and leadership development opportunities. MOF2F helps individuals with developmental disabilities or special healthcare needs and their families to be well informed, hopeful, connected within their communities, and know that they are not alone in their experience with disability.

Through MOF2F, parents and self-advocates can be connected to either a staff member who has already experienced guardianship choices and/or be matched to another parent through SOS ("Sharing Our Strengths") mentor program that can talk through their decisions and what led them to choose

(or not choose) guardianship options and alternatives. MOF2F can provide information, assistance with thinking through the alternatives, and help with problem solving difficult situations, as well as emotional support to parents and self-advocates as they work through this process.

MOF2F
215 W. Pershing, 6th floor, Kansas City, MO 64108
800-444-0821 (toll free)
mofamilytofamily.org

UMKC Institute for Human Development, UCEDD
215 W. Pershing Road, 6th floor, Kansas City, MO 64108
800-444-0821 (toll free)
www.ihd.umkc.edu

Missouri Protection & Advocacy Services (Application Unit)
925 S. Country Club Drive, Jefferson City, MO 65109
800-392-8667
moadvocacy.org

People First of Missouri, Missouri's statewide self-advocacy organization
800-558-8652
missouripeoplefirst.org

Missouri Revised Statutes - Chapter 475
Probate Code—Guardianship
http://www.moga.mo.gov/STATUTES/C475.HTM

Appendices

APPENDIX 1: Identifying Alternatives to Guardianship
(the "tool")

APPENDIX 2: Options & Alternatives

APPENDIX 3: Questions you should ask the Circuit Clerk
(Determining filing procedures for guardianship in your county)

IDENTIFYING ALTERNATIVES TO GUARDIANSHIP

Name of Individual: _____

Name of person completing this form: _____

Relationship to individual *(circle one):* Self Family Friend Guardian Other: _____

How long have you known the individual? _____

This checklist is a tool designed to be used *only* for the purposes of the training program

MO Guardianship:
Understanding Your Options & Alternatives.

It is designed to assist with identifying a person's ability to make decisions and manage key areas of the individual's life. It is intended to assist with exploring alternatives and less restrictive options to plenary or full guardianship.

The questions listed below are not exhaustive and are not intended to provide a final determination of what a person should (or should not) do in their unique circumstances.

	LEAST RESTRICTIVE: Individual Makes Own Decisions	→ → → Individual Needs Support With Making Decisions	**MOST RESTRICTIVE:** Individual has NO RIGHTS to Make Decisions
	"YES" If the answer is "YES," place a √ in the box. If the answer is "NO," go to next column. →	**"NO"** If there is an **ALTERNATIVE** that meets this need, list it below If NO Alternative meets this need, go to next column. →	**"NO"** Place a √ in the box and consider whether you need to address the need through one of the **GUARDIANSHIP OPTIONS**
EMPLOYMENT			
Can the person make and communicate choices in regard to employment?			
Can the person look for and find a job (*go to employment agency, respond to ads, use contacts*)?			
MONEY MANAGMENT			
Is the person able to manage their money (i.e. meet financial commitments, such as regular bills)?			
Is the person able to manage the monetary benefits he or she is supposed to receive?			
Is the person able to identify and resist financial exploitation?			
HEALTH & NUTRITION			
Does the person make decisions about where, when, & what to eat?			
Can the person follow a prescribed diet and/or take medicines as directed?			
Does the person understand the need to maintain personal hygiene and dental care?			
Can the person make and communicate decisions regarding medical treatment, including understanding the consequences of not accepting treatment?			
Does the person understand health consequences associated with high risk behaviors *(substance abuse, overeating, high-risk sexual activities, etc.)*?			
Can the person alert others and seek medical help for serious health problems?			

IDENTIFYING ALTERNATIVES TO GUARDIANSHIP	"YES" If "NO," go to next column. →	"NO" If NO Alternative, go to next column. →	"NO" Place a √ in the box and consider GUARDIANSHIP OPTIONS
RELATIONSHIPS			
Can the person differentiate appropriate relationship behaviors as with family, friends, co-workers, intimate partners, etc. (*how we talk to and touch others*)?			
Is the person able to make appropriate decisions concerning marriage and intimate relationships?			
Does the person understand consent and permission in regards to sexual relationships?			
PERSONAL SAFETY			
Does the person avoid common environmental dangers (*traffic, sharp objects, hot stove, poisonous products, etc.)*?			
Is the person able to recognize when someone is taking advantage of them, hurting them, or abusing them (physical, sexual, emotional) and protect themselves?			
Does the person know who to contact if they are in danger, being exploited, or being treated unfairly (*police, DSS, Arc, Lawyer*)?			
COMMUNITY LIVING			
Is the person able to be on their own without risk of serious harm or injury to themselves?			
Does the person understand what is involved with managing a home that is safe *(home maintenance, sanitary conditions, secure, etc.)*?			
Is the person able to access community resources critical to functioning successfully and safely in community settings (*post office, transportation, bank, grocery store, emergency services, church, etc.)*?			
PERSONAL DECISION-MAKING			
Is the person able to understand and communicate consent and/or permissions regarding legal documents (*i.e., contracts, powers of attorney*) or services (*i.e., legal counsel, advocacy services*)?			
Is the person able to identify someone they want to represent their interests and support them with decision making?			
Does the person demonstrate the ability to vote?			
Does the person understand consequences of making decisions that will result in them committing a crime?			
DETERMINING & DIRECTING SERVICES and SUPPORTS			
Is the person able to decide and direct what kinds of support they need or want and select who provides those supports?			
Is the person able to communicate approval to share information with parents, family members, and friends who are not legal guardians?			

Alternatives to Guardianship

GENERAL SUPPORTS:

Family/Friends

Advocacy Organizations & Community Supports (see Resource Folder)

DECISION-MAKING

Personal Contract/Agency Agreement: An agency agreement is a legal contract creating a fiduciary relationship whereby one party (the "principal") agrees that the actions of another party ("the agent") binds the principal to agreements made by the agent as if the principal had himself personally made the agreement. A formal agreement is usually signed setting out the commission/pay the agent will receive, the duration, and other terms on which the principal and agent will do business together.

- **Power of Attorney:** Power of Attorney is a written legal document that lets a competent individual designate another person to act on his/her behalf, as stated in the document. Often, this is used to give authority to act for another person in specified or all legal or financial matters.
- **Durable Power of Attorney for Health Care:** A health care power of attorney (HCPOA) is a legally enforceable document in which you to authorize another person to make health care decisions when you cannot do so. The document must be prepared and signed while you are competent, and is not affected by your later disability or incapacity. You may state in the document both the types of treatment you do not want as well as any treatment that you want to be sure that you receive. The document can give your attorney-in-fact authority to make specific health care decisions or the authority to make any and all health-care decisions you could make, if you were able. However, as long as you can make your own decisions, you, and not your attorney-in-fact, have the authority to make your own treatment decisions.
- **Living Will:** A living will (treatment directive) is a written declaration directing your doctor to withhold or withdraw death-prolonging procedures should you lack the capacity to make the decisions. It does not apply to any other health-care decisions. A living will directs your doctor's actions when the use of death-prolonging procedures would serve only to postpone the moment of death, but would not provide a cure for the condition.

MONEY MANAGEMENT

Limited and/or Joint Bank Accounts, Direct Deposit, and Automatic Bill Pay

Representative Payee: A representative payee is an individual or organization designated by you, a government agency, or the court to receive your money to use on your behalf. A Representative Payee is available for Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Veteran's Affairs (VA) benefits, Railroad Retirement Benefits, and Black Lung benefits.

Living Trust: A living trust is a trust created while you are still alive. A living trust is a legal entity completely separate from you. If you establish a trust, you are a **grantor** or **trustor**. If you are managing a trust, you are a **trustee**. You can be both a grantor and a trustee. If another individual established a trust for you, you are the **beneficiary**. A living trust will continue after the death of the grantor, and does not require involvement of the Probate Court. Because the trust is recognized as a separate entity, the trustee can continue to make distributions to the beneficiary without any involvement from the court.

Special Needs Trust: A special needs trust or supplemental benefits trust is a trust established to provide benefits for a beneficiary without causing the beneficiary to lose public benefits such as Supplemental Security Income (SSI) and Medicaid. A special needs trust can be established by you, as a grandparent, parent, sibling, son or daughter, or a friend. Additionally, the court can establish a special needs trust. However, the special needs trust cannot be established by the intended beneficiary, the individual with special needs. There are three different types of special needs trusts:. A special needs trust can be used for the following purposes:

- Purchase, rent , or repair a home
- Pay utilities and taxes
- Vacations
- Equipment (including recreational)
- Medical costs not covered by Medicaid
- Attorney and/or advocate fees.

PERSONAL SAFETY

Adult Protective Services: If you are an adult with a developmental disability, a Court may order a County Board of Mental Retardation and Developmental Disabilities to provide protective services if you are being abused and/or neglected. However, you must lack the capacity to make decisions to protect yourself.

Protection Orders (TRO): You may ask a Court to order an individual who is hurting you, or threatening to hurt you, to stay away from you.

Guardianship **Options**

You do *not* automatically require a guardian because you have a mental or physical disability. Since guardianship involves the loss of fundamental rights, it should be considered only when a person cannot make informed decisions on their own or when accommodated or supported in their decision making.

All adults are presumed competent to make choices about their lives. Sometimes, because of limited cognitive or communication skills, a person may need help making decisions, and an advocate or guardian may be beneficial. If you do not have the capacity to make decisions for yourself, and are adjudged to be incapacitated, a guardian will be appointed to make decisions for you. The court must be satisfied that your disability will result in serious physical injury, illness, or disease if guardianship is not granted.

Limited Guardianship*: If you are incompetent in a limited area, you will be placed under a limited guardianship. For instance, if you do not have the capacity to understand the implications of your health care decisions, the court may appoint a guardian for medical purposes only. The guardian would then make all of your health care decisions, including which doctor to see, which treatments to follow, and whether or not to accept life-sustaining treatment. Limited guardianships may also be appointed for: placement, medication, behavior plans, and paying bills

Plenary or Full Guardianship*: If you are under a full guardianship, your guardian will make all of your personal and financial decisions for you. A Plenary or "Full" Guardianship creates a substitute decision-maker who makes decisions for you which may include, but is not limited to, the following:

- where to live
- whether or not to marry
- whether or not to work
- how to spend income
- who to associate with
- whether or not to seek medical care
- whether or not to vote
- whether or not to enter into a contract

*For more detailed information, see Missouri Revised Statutes, Chapter 475, Probate Code –Guardianship
http://www.moga.mo.gov/STATUTES/C475.HTM

IMPORTANT NOTE:

This handout is designed to assist with identifying guardianship options and alternatives, and is to be used *only* for the purposes of the training program

MO Guardianship:
Understanding Your Options & Alternatives

The above listed guardianship options and alternatives are not exhaustive and are not intended to provide a final determination of what a person should (*or should not*) do in their unique circumstances. They are intended to assist self-advocates, their families, and key supporters toward making informed decisions as they consider options for achieving an appropriate level of support and/or protection.

APPENDIX 3
QUESTIONS YOU SHOULD ASK THE CIRCUIT CLERK

Questions you should ask the Circuit Clerk to determine the court's filing procedures for applying for Guardianship and/or terminating a Guardianship in your county:

1) Guardianship:

Does your county have a Probate Form for filing Guardianship and/or Conservatorship?

- If yes, what is the name of the Probate Form?
- If yes, is the Probate Form accessible online?
  - If yes, what is the website address?
  - If no, how can I access a copy?

Does the Probate Court only accept the Probate Form (i.e. does the Probate Accept applications in a format other than the Probate Form provided by the Court, such as a Petition for Guardianship)?

- If the Court will accept a Petition or other application format, does it have guidelines I should follow? If so, where can those guidelines be found?

2) Terminating and/or Reducing Guardianship:

Does your county have a Probate Form for terminating Guardianship and/or Conservatorship?

- If yes, what is the name of the Probate Form?
- If yes, is the Probate Form accessible online?
  - If yes, what is the website address?
  - If no, how can I access a copy?

Does the Probate Court only accept the Probate Form (i.e. does the Probate Accept applications in a format other than the Probate Form provided by the Court, such as a Petition to terminate Guardianship)?

- If the Court will accept a Petition or other application format, does it have guidelines I should follow? If so, where can those guidelines be found?

3) What if I don't have an Attorney?

What assistance, if any, will the clerk's office provide to Pro Se individuals (individuals who do not have an attorney and are representing themselves)?

- Will the court accept a petition from a non-attorney?
- If the court requires I have an attorney to file a petition, will the court appoint an attorney to do so for me? If so, at what cost?

NOTES

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