

## Why are you thinking about Guardianship?

There are a lot of reasons why individuals with developmental disabilities, mental illness, or age related cognitive issues; their families, and key supporters might be considering guardianship options and alternatives for decision making support and/or protection. For example:

- You have a child with a developmental disability close to 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 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 decisions being made for you.
- The individual you are concerned about currently needs protection or assistance or is experiencing a difficult time.

There is a belief that just because someone has a disability (especially a developmental disability), a special healthcare need, mental illness or age/illness related cognitive issues, he or she will need a guardian. In reality, everyone is presumed competent to make choices about their own lives when they are age 18 or older, unless a court says otherwise.

Before pursuing guardianship, it is important that you consider whether guardianship will achieve the outcome you want.

- **Guardianship is not a quick fix**, it is a legal action that limits or denies a person the right to make their own decisions, vote, obtain a drivers license, consent or object to medical care, or enter into contracts like marriage or home ownership. Individuals with a guardian may not get to decide where they live, with whom they live, where they 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 is important to consider the individual's needs for support and/or protection and then ask, "How will having a guardian address each specific need?" Simply because a person has a developmental disability, special healthcare need, mental illness or is aging, is not a reason to assume that he/she cannot make decisions or express preferences. With the right supports, many people with disabilities, special healthcare needs, mental illness, or who are aging, are able to remain "their own person," making their own decisions and being in charge of their own lives.
- The trick is to find a balance – giving the person enough support and protection so they can live a safe and healthy life without taking away their rights and freedom to make choices and decisions for themselves.

**Alternatives to guardianship** may allow individuals to hold on to some or all of their rights. They include:

- **General Supports** – natural, unpaid, and community resources and may include family, friends, and advocacy organizations.
- **Decision-Making Supports** – create legal documents (such as Power of Attorney) giving authority to someone on behalf of the individual in certain areas.
- **Money Management Supports** – help manage financial obligations and avoid exploitation. These supports include such things as joint bank accounts and trusts.
- **Personal Safety Supports** – are useful for individuals at risk for being abused/neglected by an intimate partner, spouse, family member, personal assistant or caregiver.

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

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

#### **What might you need assistance to access? (with an attorney)**

- General 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

**Questions? Call us at 800-444-0821 or visit [www.mofamilytofamily.org](http://www.mofamilytofamily.org)**