



GUARDIANSHIP RIGHTS IN THE VIRGIN ISLANDS

A Quick Reference Guide

This guide answers basic questions regarding the rights of persons who are involved with the appointment of a guardian. It should be used as a starting point for the most common questions. More complex questions should be answered by an attorney at DRCVI.

WHAT DOES GUARDIANSHIP MEAN?

Guardianship is a court procedure to decide whether or not to appoint someone to act as a guardian for another person. The court makes its decision on behalf of persons who have difficulty making necessary decisions for themselves. Only the V.I. Superior Court may appoint a guardian to make personal decisions for another person (who is then called the ward).

A dedicated guardian will protect the personal and financial interests of his/her ward and will make every effort to act in the ward's best interest. The guardian should, whenever possible, take into account the values and expressed wishes of the person—the ward— whose ability to make necessary decisions is impaired. It is highly unlikely that a person who is blind or deaf or has a mobility impairment, for example, would require the assistance of a guardian as described by the Virgin Islands Code.

In the U.S. Virgin Islands a guardian usually has authority over his/her ward's property and finances. Under U.S. Virgin Islands law, a guardianship is the most complete legal control over the personal affairs of an individual.

More and more, states are looking at what persons can or cannot do for themselves, rather than at the person's medical status. So, before a decision is made about whether a guardian is needed, the court must ask: What can this person do?

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WHAT IF I DECIDE I WANT A GUARDIAN?

If you voluntarily choose to have a friend or relative become your guardian you must choose a person who is a resident of the U.S. Virgin Islands. Then you must make a petition, in writing, to the V. I. Superior Court.

The court will set a date and time for a hearing on your guardianship petition, and tell you when to appear in court with your friend or relative.

As is the case with any matters brought to court, one should be fully prepared for the guardianship hearing. Think carefully



about the reasons why you believe the appointment of a guardian would be in your best interest so you can explain your reasons to the judge. The decision of the court will affect your personal liberty and the control of your property.

After a full hearing the court will decide whether you should have a guardian and whether the person you have chosen should be appointed to that position.

For more information contact your attorney or call DRCVI.

WHAT IS THE PROCESS FOR AN INVOLUNTARY GUARDIANSHIP?

If necessary, a guardian can be appointed for a person whose ability to make appropriate decisions is impaired. The granting of such power should not be taken lightly; a guardian has significant and substantial control over many aspects of another person's life. The authority given to a guardian allows that person

to make the most important decisions about the ward's future, with or without the ward's consent.

The process of guardianship takes place in the court and becomes final when the court decides such guardianship is "necessary." The ward must be a resident of, or have an estate in,

the Virgin Islands.

See Title 15, section 841(a) of the V.I. Code for further information, or contact DRCVI.

***Do Not Make A
Guardianship Decision
Lightly!***

WHAT ARE THE RESPONSIBILITIES OF A GUARDIAN?

A guardian is the main decision-maker for another person (his/her ward). The guardian, therefore, has significant responsibility, including the care, custody and management of the ward's property: real estate (a house, for example) and personal property (the person's

bank account, for example). Guardianship also includes the responsibility to educate any children of the ward, and pay all debts and settle all accounts on the ward's behalf.

If there is any legal action required on behalf of the ward, the guardian must pursue the ac-

tion, or appear on the ward's behalf. Finally, there is an overall responsibility to see to the general well-being of the individual who is his/her ward. As you can see, the responsibility of being a guardian should not be taken lightly.

See V.I. Code Title 15, Sections 841, 843, 881.

ARE THERE ALTERNATIVES TO GUARDIANSHIP?

If you think you may need a guardian, consider first whether you may be able to use other means of getting help for making decisions. Remember, guardianship would allow one person to make important decisions for you. Your freedom to make your own decisions is then drastically affected.

The most obvious alternative is to have a trusted family member provide informal assistance to help you make difficult decisions about your financial, personal, and other choices about your life. This preserves your

ability to maintain personal decision-making power. Another alternative would be to establish a joint bank account, with that trusted person so that you maintain some control over your money.



In a full guardianship you may lose such freedoms as the right to vote, to marry, or even to socialize with friends.

See the sections in this brochure on “Alternatives” and “What If I Want a Guardian?”

A limited guardianship is another, less restrictive, alternative to full guardianship. In this type of guardianship, only a limited amount of authority may be granted to a guardian so that the person with difficulty making decisions may still retain some independence.

IF I HAVE A DISABILITY, DO I NEED A GUARDIAN?

Absolutely not!

The purpose for guardianship is to help you, but only if you need such help. There is nothing in the law that requires people with disabilities to have a guardian. Of course, there may be circumstances when your ability to choose or decide is impaired, but this is generally the

exception and not the rule.

Too often, society labels people with disabilities as incompetent, as though a physical impairment affects that person’s ability and/or right to choose or to make decisions. That is not the case, as we well know!

If you have a significant disability, and you would like the assistance of a guardian, you have the right to use the procedures of the legal system to petition for a guardian.

The Quick Reference Guides are made available to you through the Disability Rights Center of the Virgin Islands. The protection and advocacy system was created by the U.S. Congress in 1975 to give people with disabilities access to legal services as a means of guaranteeing their inalienable rights of citizenship and promoting opportunity for independence, productivity, integration and inclusion into the community. DRCVI has been the designated agency to provide these services since 1977.

This guide is a work product produced by DRCVI for your information.

Note: Laws change and this is just a summary. It is not a substitute for legal advice. For more information, contact your attorney or call DRCVI.

Community Advocacy:

Persons with disabilities too often are not aware of their rights and how these rights may be affected by guardianship.

What do you think should be done about guardianship for persons with disabilities, as it relates to the protection of their rights overall?

How you can help:

- *Join local family-oriented associations and raise the issue at meetings.*
- *Submit Letters to the Editor to express your views.*
- *Meet with members of the V.I. Senate to discuss your concerns.*

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GUARDIANSHIP ACTIVITIES BY DRCVI

- Providing assistance to persons with disabilities who are not fully aware of the legal rights and responsibilities of guardianship
- Reviewing legislation in the Virgin Islands and other jurisdictions and advocating for changes that more adequately preserve and protect the rights of persons with disabilities
- Reviewing proposed legislation that the Virgin Islands Government should consider when re-writing the laws of guardianship in the Virgin Islands.

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