

Considering a guardianship: Is it something your son or daughter will need at 18?

By Marcia Kelly

Eighteen years may seem like a young age, but in the eyes of the law,* it means a person is an independent adult. Being deemed an adult means a person can do such things as vote, sign contracts, or consent to surgery without anyone else's permission. That's true even for teens with disabilities who might not be able to take care of themselves or manage key areas of life, such as employment, housing, nutrition, safety, or medical care.

If your teen is not able to make or communicate reasonable personal decisions or is unable to manage essential personal needs, you may want to consider the need for a guardianship. This legal tool grants you or another designated person the legal authority to make decisions for your adult child. Although a guardianship can be implemented at any time, developing one by your child's 18th birthday can help ensure a smooth transition from childhood to adulthood. Considering whether a guardianship is appropriate for your family is an important part of your overall planning for your child's future.

How a guardianship can help

"A guardianship focuses on a person's well-being—and their vulnerabilities," explains Minneapolis attorney Bob Gunderson. "Having one in place by the time your child is 18 helps you manage that transition when many changes are occurring. Your child may be leaving school and going to a vocational or residential setting. They'll be leaving the pediatric clinic where everyone knows them and facing a different set of players in the adult medicine clinic. If you don't have a guardianship in place and your child is not able to make appropriate decisions, there's no one to give direction. As a result, you may be shut out and your young adult could be more vulnerable," he says.

"I always tell moms and dads, 'this guardianship does not change your relationship with your child. What it changes is your relationship with the outside world,'" he adds.

* In Minnesota, the age of majority (adulthood) is 18. Other states' laws vary.

With court approval, a guardian may have power in up to seven areas: housing, day programs (such as school or work), medical care, contracts, public assistance, general supervisory power, and control of personal effects, Gunderson says. If the court is satisfied that your child is unable to manage all of those areas independently, unlimited guardianship is granted. If your child can manage some areas but not others, limited guardianship will be granted.

Establishing a guardianship has significant implications for your adult child. On one hand, it puts protections in place so your son or daughter can live life more safely, with as much self-determination as possible; on the other hand, it limits civil rights.

Balancing values of independence and protection can be a challenge. Depending on your adult child's needs and wishes, you may consider less restrictive options before choosing guardianship. A health care directive, for example, is a written document that describes a person's wishes about their health care. If a person is able to understand and sign the document, it can be used to name an agent, such as a parent, to make decisions if the person is unable to make or communicate their health care choices.

Choosing a guardian

If you do opt for a guardianship, you will want to think about whom should assume that duty. In many families, parents take on the role for as long as they are able. When parents die or can no longer do the job, someone else must be named. That person might be a sibling, relative, or trusted friend. You may even want to select co-guardians, such as a parent and a sibling, to share the responsibility.

There is no exact formula to guide you as you choose an appropriate guardian. You may, however, find it helpful to consider the following factors:

- **Age.** If the prospective guardian is close in age to your adult child, he or she may be able to serve for a lifetime. If you choose someone who is significantly older, such as a grandparent, your adult child may need a contingent guardian.
- ***Relationship with your child.*** A guardian makes important personal decisions that will have a significant impact on your adult child. You will want to choose someone who has a loving, respectful relationship with your child and will make decisions that support his or her values, desires, and independence.

- *Willingness to serve.* Acting as a guardian is a big commitment. Whoever assumes the role should do so willingly and not feel pressured into it.
- *Proximity.* Living nearby will help the guardian to pay proper attention to important issues and maintain a close relationship with your adult child.
- *Skills.* A guardian should be ethical, able to communicate effectively, have good organizational skills, and feel comfortable dealing with the court and other such agencies.

Choosing to have a guardianship of your child is a big decision, but it still has some flexibility. “It does not have to be forever,” Gunderson says, noting that if your child becomes able to manage his or her affairs, the court can end the guardianship. Keep in mind, too, that the court reviews the arrangement each year. The scope of the guardianship can be renegotiated or a different guardian can be chosen.

If you are considering guardianship for your adult child, you no doubt will have many questions. Many factors will weigh into your decision. Every situation is unique, so it is advisable, although not required, to begin by consulting an attorney at least six to eight weeks before your child’s 18th birthday. You may also want to seek information from disability-specific organizations, the Minnesota Department of Human Services, your county’s district court probate division, your county social worker (if you have one), or PACER Center. Learn more about this important topic at www.pacer.org or by calling PACER at 952-838-9000.

Keeping your child solvent is the concern

A guardianship helps secure the personal well-being of your adult child. If you also need to address your child’s financial needs, you may want to investigate these options.

■ A conservatorship is a court order that gives one person the legal right to manage another person’s estate, such as his or her finances and property. If your adult child has significant assets, this may be an appropriate choice. However, if your adult child with a disability is eligible for and participates in public assistance programs, having such assets may disqualify them from benefits. You may want to think about other ways to provide financial oversight.

- A power of attorney allows a parent or other selected adult to pay bills and make other financial decisions for another person without removing any basic civil rights, as a guardianship does. The person must have the ability to understand and sign the document presented to him or her.
- A special needs trust is funded by the person's own funds. Money in this type of trust does not disqualify a person from public assistance programs.
- A supplemental needs trust is funded by someone other than the person with the disability. Like a special needs trust, these assets do not disqualify a person from public assistance programs.
- A Supplemental Security Income (SSI) representative payee, designated by the Social Security Administration (SSA), is authorized to receive and disburse SSI financial benefits for your adult child. He or she makes a report each year to the SSA, accounting for how the funds have been spent.