



# NÖ Landesverein für Sachwalterschaft und Bewohnervertretung

## ADULT GUARDIANSHIP

### What is adult guardianship?

Guardians are the representatives of persons with mental disabilities or a mental illness who are of age but unable to take care of their matters without acting to their own detriment; guardians are appointed by courts.

### Alternative to guardianship

If a person is able to take care of his/her matters on his/her own in spite of mental illness or disability – e.g. with the help of family or psycho-social services – the appointment of a guardian is ruled out. The same is true if the person concerned may be represented by next of kin or a person holding a durable power of attorney for legal representation.

### Who can be a guardian?

Guardians may be persons close to the person concerned, non-profit advocacy organizations, attorneys-at-law, notaries or other persons who are suited to the tasks. Primarily, persons close to the person concerned (next of kin, friends, acquaintances) will be appointed. If a person with a disability comes of age, the parent who had custody previously will as a rule be appointed adult guardian.

**Non-profit advocacy organizations** will be appointed as guardians if no person close to the ward is available and/or if special requirements are linked with the guardianship.

**Attorneys-at-law or notaries** will be appointed as guardians if the matters to be attended to are mostly legal in nature and/or if no person close to the ward or an advocacy organization are available.

**Other appropriate persons** (e.g. social workers) may be appointed if neither persons close to the ward nor an advocacy organization nor an attorney/notary is available.

### How does guardianship come about?

The district court having jurisdiction may appoint a guardian at the request of the person concerned or at the suggestion of a third party. Usually, the suggestion to open guardianship proceedings comes from a relative, an authority or a social service. The contact to turn to is the judge in charge of guardianship cases at the district court which has jurisdiction over the place of residence of the person concerned.

### What is the procedure like in court?

The judge will first talk to the person concerned, the situation will be reviewed by a procedural guardian and a medical opinion will be drawn up. Only then will there be a hearing to discuss the matter. At the end of proceedings, the judge issues an order stating if a guardian is appointed, and if so, who it is and which specific matters he/she has to attend to.

### What are the tasks of a guardian?

The tasks of a guardian as a **legal representative** are determined by the judge on a case-by-case basis. However, the guardian invariably has to arrange for the care the ward needs and to be in touch with him/her at least once a month. This task is called **guardianship of the person**.

### What is the legal effect of guardianship?

The ward does not have legal capacity in the matters the guardian is in charge of. This means that he/she is unable to enter into contracts, file petitions or take any other legal action within the scope of responsibility of the guardian. In all other respects he/she continues to have legal capacity.

### Who supervises the guardian?

To ensure that the guardian acts in the interest of the person concerned, the guardianship court has certain options of supervision and intervention.

Important decisions taken by the guardian, such as the sale of real property, bringing legal action, or consent to serious medical treatment require approval by a court to be legally valid if the person concerned lacks insight and judgement. The guardian has to report on contacts with the ward as well as his/her housing situation and living conditions at least once a year. If the guardian is also in charge of financial matters, he/she has to submit a statement of account at three years' intervals.

### How much does the ward have to pay for the guardian?

The guardian may apply to the court for compensation and reimbursement of expenses. Usually, 5% of the annual net income of the person concerned, not considering earmarked benefits such as care benefit, family allowance or housing allowance. In addition a maximum of 2% of the ward's assets exceeding € 10,000.- may be granted.

### For how long is guardianship maintained?

Guardianship may be revoked if the person concerned does not require representation any more because the matters in question have been concluded, or the person's state of health has improved. It ends immediately in any event if the person concerned dies. From this moment on, the guardian must not take any further action under the guardianship title.



## Guardianship for those concerned

If you want to know more about us, please give us a call (phone +43 2742/77175) or visit our website [www.noelv.at](http://www.noelv.at).

For information about the *durable power of attorney for legal representation (Vorsorgevollmacht)* as a further alternative to guardianship as well as about *guardianship (Sachwalterschaft)* please refer to our folders. A template of the durable power of attorney for legal representation is available for downloading from our website.

Please do not hesitate to contact us if you want us to send our brochures on guardianship and residential advocacy (*Bewohnervertretung*).

## About us

The "NÖ Landesverein für Sachwalterschaft" was founded by the Land of Lower Austria and social welfare organizations working in the region in 1984. The task of the non-profit advocacy organization is to provide the courts with suitable full-time and volunteer guardians. The Federal Ministry of Justice supports the non-profit and non-partisan organization so that it can assume the tasks stipulated in guardianship law on behalf of mentally ill and disabled persons.



"You remind me of my late husband, young man – he was also named Walter and he also took care of a lot of things for me."

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