



NÖ Landesverein für Sachwalterschaft und Bewohnervertretung

AGENT'S AUTHORITY GRANTED TO NEXT OF KIN

Due to the change in guardianship law effective as from 1 July 2007, guardianships are to be restricted to those cases in which the appointment of a guardian is unavoidable. This is to be accomplished by legislation offering alternatives to guardianship, i.e. agent's authority granted to next of kin (*Vertretungsbefugnis nächster Angehöriger*) or durable powers of attorney for legal representation (*Vorsorgevollmacht*).

Agent's authority granted to next of kin

Next of kin may represent persons of age if, due to a mental illness or disability, these are no longer able to attend to legal transactions in daily life or to cover their need for care, or if they are unable to assert their rights.

It will, however, only come to bear if no guardian or other representative (proxy, surrogate) has been appointed for the person concerned.

What is the next of kin responsible for?

The authority granted to next of kin covers the current income of and care-related services required by the persons concerned to the extent that this is necessary to attend to legal transactions in daily life and cover their need for care.

Moreover, next of kin are entitled to assert claims (pension, care benefit, social assistance etc.) and consent to medical treatment which does not seriously or lastingly impact the person's health or personality if the person concerned lacks insight and judgement.

Who is next of kin?

Next of kin are defined as parents, children who are of age and the spouse or life partner living in the same household. If the person is a s life-partner (de-facto wife/husband) cohabitation must have lasted for at least three years.

The obligations of next of kin

Assumption of the agent's authority comes with the following obligations:

- the person represented has to be informed of the fact that the agent's authority is exercised
- the welfare of the person represented has to be promoted
- the wishes and ideas of the person represented have to be taken into consideration
- the agent's authority has to be entered in the Central Austrian Register of Representation Österreichisches Zentrales Vertretungsverzeichnis (ÖZVV)

How is a person authorized to represent identified?

To obtain an agent's authority, the next of kin has to submit to a notary public a medical certificate confirming that the person concerned lacks legal capacity: Moreover, he/she has to prove that he/she is next of kin. The notary then enters the agent's authority in the Central Austrian Register of Representation (ÖZVV) and hands the next of kin a certificate identifying him/her as the authorized agent of the person concerned.

When is it impossible to register an agent's authority?

It is impossible to register an agent's authority in case of an objection against the granting of agent's authority to next of kin or if a durable power of attorney for legal representation has been registered, or if a guardian has been appointed for related matters.

Do I have to be represented by next of kin?

To avoid forcing representation by next of kin on those concerned, legislation includes the option of objection. The agent's authority does not become effective or ends if the person represented objects to it. Even an objection lodged after loss of legal capacity or insight and judgement will terminate the agent's authority or cause it not to become effective.

Written objections to the granting of agent's authority to next of kin may be submitted for registration to notaries or attorneys-at-law.

The rights of next of kin in guardianship proceedings

Moreover, next of kin are also granted rights in proceedings for the appointment of a guardian. These include:

- the right to be served the order on dropping proceedings
- a declaration if an agent's authority was granted to next of kin
- the right to be served the order appointing the guardian (and stating if an agent's authority granted to next of kin exists)
- the right to appeal in proceedings for the appointment of a guardian

The right to be served orders and the right to appeal is only granted to those next of kin whose agent's authority is registered in the ÖZVV.

If you want to know more about us, please give us a call (phone +43 2742/77175) or visit our website 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.

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Imprint:

Publisher:
NÖ Landesverein für Sachwalterschaft
und Bewohnervertretung
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"Fortunately, my son is taking care of this."

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