

## What if someone is seeking to obtain Guardianship over you and you object?

You need to call an attorney right away.

## What are alternatives to Guardianship?

- Durable Power of Attorney (made while the person has capacity to make decisions)
- Case or Care Management
- Health Care Power of Attorney
- SC Adult Health Care Consent Act
- Protective Orders



## Is a Guardianship permanent?

- Not always.
- Can end if the Ward is no longer incapacitated.
- Guardian can be changed if they act improperly or if they can no longer serve.

## Other Legal Representation and materials:

**Lawhelp.org/sc** is South Carolina's guide to hundreds of free legal resources such as:

- Information about your rights and legal responsibilities
- Legal forms and court documents

**Sclegal.org** is a statewide website that contains:

- Information for the public in all civil law areas
- Legal library

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## Other Legal Representation

Consumer & Bankruptcy • Education  
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**South Carolina  
Legal Services**

*Balancing the Scales of Justice*

## **GUARDIANSHIPS: CARING FOR and PROTECTING YOUR INCAPACITATED LOVED ONES**



## **Our Mission**

South Carolina Legal Services is a statewide law firm that provides civil legal services to protect the rights and represent the interests of low-income South Carolinians.

## **For Free Services**

1 (888) 346-5592

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### **What is a Guardian?**

- A person appointed by the Probate Court
- Makes decisions for an adult who lacks the ability to make decisions on their own
- Can make decisions about a ward's health, maintenance, and support.

### **What is a Ward?**

An adult who has been determined to be incapacitated by the Probate Court.

### **What is Incapacity?**

- Even with support and assistance an adult does not have the ability to: evaluate and respond to information, make or communicate decisions.
- Even with support and assistance the adult cannot make decisions for their physical health, safety, or self-care.
- Just because an adult makes decisions you disagree with or has a disability does not mean that they are incapacitated.

### **How do I know if I need to get Guardianship?**

- Not needed if you are:
  - able to communicate with doctors
  - not having any difficulty getting the care and treatment that they need
- Should always be a last resort.
- Try supportive decision-making first.

### **Where do I go to get Guardianship?**

It is filed in the Probate Court in the county where the incapacitated person lives.

### **What is the process for getting Guardianship?**

- You start by filing a Summons and Petition with the Probate Court. There will be a filing fee for this.
- The alleged incapacitated person is served and will be given an opportunity to respond.
- You should propose a doctor to examine the alleged incapacitated person and submit a report to the court with their opinion as to capacity.
- The court will also appoint an attorney to represent the alleged incapacitated person's desires, and a Guardian ad Litem to represent the alleged incapacitated person's best interests.
- The court will hold a hearing to determine incapacity and whether to appoint the guardian.
- Consult with an attorney before filing on your own



### **What are the duties of a Guardian?**

- Make decisions for a Ward's:
  - Health
  - Maintenance
  - Support

### **What are the qualifications?**

- Requires that you are:
  - Caring
  - Respectful
  - Patient
  - Responsible to your Ward's needs
  - Willing and able to care for the Ward
  - Will follow the Probate Court's instructions.
- You may not be qualified to be a Guardian if you are a convicted felon, on the sex offender registry, on the adult abuse registry, or have health or medical concerns of your own that will affect your ability to serve.

### **What if the Ward has assets?**

- If the income is solely from Social Security then apply to be the Ward's Representative Payee.
- Contact the Social Security Administration at 1.800.772.1213 for more information.
- Guardian does not handle assets.
- If the Ward owns other assets, he/she may need a Conservator in addition to a Guardian. The Probate Court has a process for being appointed as Conservator. It is best to bring these actions at the same time if both a Conservatorship and Guardianship are needed.

