



## Rights of Individuals Under Guardianship

Excerpted from NGA's [\*Fundamentals of Guardianship\*](#)

### Rights Removed or Delegated

Once the court determines that a person is legally incapacitated, it has the authority to remove certain rights and, if necessary, delegate them to the guardian to exercise on behalf of the person. The rights that are affected by the guardian's appointment vary from state to state. Personal rights that may be removed, but cannot be delegated to another, include the right to:

- Marry
- Vote
- Have a driver's license
- Travel
- Seek or retain employment
- Own or possess firearms or weapons

Rights that may be removed and then delegated to the guardian could include the right to:

- Determine residence
- Consent to medical or mental health treatment
- Manage property and assets
- Contract
- File or defend law suits
- Change marital status
- Apply for government benefits
- Make gifts or dispose of property
- Make decisions about social environment, education, or habitation

### Rights Retained

Even though adults under guardianship may lose certain rights during the guardianship process, they retain all other rights. It is the guardian's responsibility to make sure these rights are not violated.

These rights include all those guaranteed by federal and state constitutions and laws as well as the specific rights to:

- Be treated with dignity and respect (Standard 3.I)
- Be protected against abuse and neglect (Standard 12.I.I)
- Have a safe, sanitary and humane living, working, and learning environment, which is the least restrictive environment for the person's needs and conditions (Standard 8)
- Have privacy, including the right to bodily privacy and the right to private and uncensored communication with others by mail, telephone, or personal visits (Standard 11)
- Religious expression in the manner of his/her choice (Standard 10)
- Interpersonal relationships and sexual expression (Standard 10.II)

- Exercise control over all aspects of life that the court has not delegated to the guardian (Standard 9.I)
- Receive appropriate services suited to the person's needs and conditions, including mental health services (Standard 12.I.C).
- Have the guardian advocate for the person's personal desires, preferences, and opinions particularly in regards to ethnic, religious, and cultural values (Standard 10.I)
- Exercise the option to procreate (Standard 10.II.C)
- Receive equal treatment under the law, regardless of race, religion, creed, sex, age, marital status, sexual orientation, or political affiliations
- Have explanations for any medical procedures or treatment, including information about the benefits, risks, and side effects of the treatment, and any alternative procedures or medications available (Standard 14)
- Have personal information kept confidential including withholding certain information the person may not want his or her family to know (Standard 11.V)
- Receive prudent financial management of property and information regarding how that property is managed (Standard 17)
- Receive notice of all proceedings related to the guardianship
- Review personal records, including medical, financial, and treatment records
- Speak privately with an attorney or other advocate
- Petition the court to modify or terminate the guardianship including the right to meet privately with an attorney or other advocate to assist with this legal procedure
- Have the guardian available to meet the needs of the person at all times
- Receive continuous review of the need for full or partial restoration of rights (Standard 2.VIII)
- Bring a grievance against the guardian or request the court to review the guardian's actions
- Request removal and replacement of the guardian, or request that the court restore rights if it is shown that the person has regained capacity to make some or all decisions (Standard 21.III)

The guardian also has a responsibility to inform the court of any change in the capacity of the person and request that the person's rights be restored when there is evidence that the person has regained capacity. (Standard 2, VIII).