



NADLER  
BIERNATH LLC  
SPECIAL NEEDS AND ELDER LAW

# GUARDIANSHIP IN GEORGIA

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- › This meeting does not substitute for meeting with an attorney who can give you specific advice and recommendations concerning your particular circumstances, and therefore should not be relied upon for such purposes.



# ABOUT NADLER BIERNATH

- › Over 25 years of expertise in special needs and elder law
- › Exclusive focus on special needs and elder law
- › Firm is recognized nationally, regionally, and locally
- › Have helped thousands of families across Georgia with elder and special needs law
- › Our team helps clients cut through the confusion that often comes from navigating the legal and healthcare systems. We understand that all families are different, so we work hard to provide holistic, personalized planning.

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# FACTORS TO CONSIDER



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# BEHAVIORS

- › Injurious to self or others
- › Poor safety awareness
- › Cannot discriminate strangers/friends/authority figures
- › Easily manipulated by others
- › Consistently Disruptive
- › Personal space/property recognition issues



# POWERS OF ATTORNEY (POA)

- › Allows your agent to act on your behalf when you are unavailable or incapacitated
- › Financial and/or Health Care



# REQUIREMENTS FOR POA

- › Must be signed by the person appointing an agent
- › Person must be over the age of 18
- › Must have “capacity” – understand what they are doing
- › Must be independent choice
- › Must be in writing
- › May need to be notarized



# LIMITATIONS OF POA

- › Does not remove any rights
- › Cannot disavow or void contracts
- › Can be revoked
- › Can be evidence of capacity





# Supported Decision-Making

- › The child designates a person (or people) to assist with making decisions, but does not lose decision making power
  - › Can help understand information issues, and choices
  - › Help focus attention
  - › Help weigh options
- › Several states have enacted legislation providing for supported decision making as an alternative to guardianship
- › **Georgia does *not* have supported decision-making legislation**

# RIGHTS TAKEN AWAY BY GUARDIANSHIP

- › Right to enter into marriage
- › Right to enter into contracts
- › Right to determine where to live
- › Right to consent to treatment (still can participate in decision)
- › Right to revoke a revocable trust



# RIGHTS NOT LOST

- › Right to refuse treatment
- › Right to independent legal advice
- › Right to contest guardianship
- › Right to vote (but can be included)
- › Right to make a will
- › Right to participate in decisions concerning them (if possible)



# COMMON MISCONCEPTIONS ABOUT GUARDIANSHIP

- › Cannot force a person to take meds
- › Cannot make them better/more compliant
- › Does not affect access to benefits, may make it easier
- › Does not necessarily cause ineligibility for post-secondary education programming
- › It is not a punishment or failure
- › Guardian is NOT liable for acts of the ward, solely by being guardian.
  - May be liable for other reasons, but not just because you are the guardian (car, gun, etc.)

# GUARDIANSHIP IN GEORGIA

## Legal Standard

- › Guardianship is needed when:
  - › The proposed ward cannot make or communicate significant responsible decisions concerning their health or safety.
- › Conservatorship is needed when:
  - › The proposed ward cannot make or communicate significant responsible decisions concerning their property (and they have property).
  - › Conservatorship used to be referred to as “Guardian of the property”

# GUARDIANSHIP IN GEORGIA

## DEFINITIONS, WHO ARE THE PLAYERS?

- › Proposed Guardian/Conservator
- › Proposed Ward
- › Petitioner
- › Attorney for Proposed Ward
- › Guardian ad Litem
- › Court (Judge and Clerk)
- › Independent Examiner



# GUARDIANSHIP IN GEORGIA

## WHEN FILING A PETITION:

- › Any interested person can apply to the probate court for *guardianship or conservatorship, or both*
  - › *Must have 2 petitioners or 1 petitioner and a doctor's affidavit*
- › Court will appoint an attorney for the proposed ward
- › An independent evaluation will be conducted
- › Court will look to any advanced guardianship designations
  - › The Court makes the determination as to who is suitable
  - › The guardianship designation is only a suggestion for the Court, it is not binding

# GUARDIANSHIP IN GEORGIA

## WHEN FILING A PETITION:

- › The Court will review the petition to make sure there is sufficient evidence
- › If admitted for filing, Sheriff (or process server) will serve the papers on the proposed ward
- › Petitioner is responsible for fees



# GUARDIANSHIP IN GEORGIA

- › The Court will conduct a hearing
- › If the Court finds that the proposed ward is in need of a guardian or conservator, the court will then inquire as to who is most appropriate.



# GUARDIANSHIP IN GEORGIA

- › Petitioner has the burden of proof
- › Must prove with “clear and convincing” evidence
  - › Evidence includes what a witness personally knows
  - › Private doctor’s reports are generally not admissible



# GUARDIANSHIP IN GEORGIA

- › Conservator must post a bond as set by the court.
  - › If you cannot be bonded, do not apply.
- › Guardian/Conservator take oath
- › Court will issue Letters of Guardianship/Conservatorship this shows authority to act.
- › Guardian and Conservator have responsibilities.

# GUARDIANSHIP IN GEORGIA

- › Responsibilities of Conservator
  - › Conservator must prepare annual Asset Management Plan for Court to approve
  - › Conservator must provide annual accountings

# GUARDIANSHIP IN GEORGIA

## RESPONSIBILITIES OF GUARDIAN

- › Must be available to the ward.
- › Must act in best interest of the ward.
- › Must timely file all required reports (PSRs).
- › Must use ward's resources for ward's benefit.
- › Must inform Court of any conflicts of interest, including certain changes that Guardian may want to make.



# ADDITIONAL INFORMATION

- › [www.gaprobate.gov](http://www.gaprobate.gov) – information and forms, this is the official website of the Probate Courts of Georgia, each local court may have additional forms that are required.
- › [www.nadlerbiernath.com](http://www.nadlerbiernath.com) – information, videos



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