



## Power of Attorney vs. Guardianship

### Overview:

Below you will find information on how to create a Power of Attorney document and Guardianship proceedings. To begin the process, Achieva recommends contacting a local attorney to discuss your personal situation and draft an individualized document specific to your needs.

Guardianship is a much more complicated and expensive process than drafting a Power of Attorney. Guardianship should be the action of last resort.

### The Process to Obtain Power of Attorney:

#### Important Terms and Definitions

**Principal:** The person who grants legal rights and powers to another person.

**Agent:** The person who the principal granted legal rights and powers to. The agent can act for the principal on financial and/or business matters and also medical and health decisions.

#### Four Types of Power of Attorney

1. **General Power of Attorney:** The agent can perform almost any act as the principal, such as opening financial accounts and managing personal finances. A general power of attorney ends if the principal becomes incapacitated, revokes the power of attorney, or passes away.
2. **Durable Power of Attorney:** The agent can act on the principal's behalf and after the principal becomes incapacitated.
3. **Special or Limited Power of Attorney:** The agent has specific powers that are limited to a certain area. For example, the power of attorney only grants the agent the authority to sell a home or other piece of real estate.
4. **Springing Durable Power of Attorney:** A "springing" power of attorney goes into effect when a specified event occurs. For example, when the principal becomes incapacitated.

### Frequently Asked Questions:

**Question:** Does a Power of Attorney need to be notarized?

Yes. A Power of Attorney needs to be signed by the principal, witnessed by two individuals, and notarized.

**Question:** When does a Power of Attorney take effect?

As soon as the document is signed and notarized unless it is a Springing Power of Attorney.

**Question:** Does a Power of Attorney take away my rights?

No. Only the court can take away your rights with a Guardianship hearing. The agent and the principal work together.

**Question:** Can I appoint more than one agent?

Yes. You can have more than one agent and typically they can work independently of each other.

**Question:** Can I revoke Power of Attorney at any time?

Yes. As long as you have legal capacity you can revoke Power of Attorney at any time. A power of attorney can be drafted in many ways and has several different legal requirements to be valid and enforceable.

Achieva Advocacy and Family Supports disability advocates are available to answer questions specific to your situation. Please contact us at 412.995.5000 x486 or [www.achieva.info/contact-advocacy](http://www.achieva.info/contact-advocacy).

### **The Process to Obtain Guardianship:**

#### **Important Terms and Definitions**

- Incapacitated Person: an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.
- Guardian: a person appointed by a court to perform court-ordered tasks of caring for an incapacitated adult's financial and personal needs.
- Petitioner: the person who files the petition with the court seeking appointment of guardianship

#### **Four Types of Guardianship in Pennsylvania**

1. Plenary Guardian of the Estate: Manages all financial affairs of the incapacitated person.
2. Limited Guardian of the Estate: Manages some financial affairs of the incapacitated person as determined by the court.
3. Plenary Guardian of the Person: Responsible for making all personal decisions for the incapacitated person.
4. Limited Guardian of the Person: Responsible for limited decision making for the incapacitated person as determined by the court.

#### **Rights of the Alleged Incapacitated Person**

- The alleged incapacitated person must be at the court hearing unless a medical doctor provides testimony that it would be harmful to the person if they were present.
- The alleged incapacitated person has the right to their own attorney separate from the petitioner's attorney.
- The alleged incapacitated person has the right to request an independent evaluation.
- The alleged incapacitated person has the right to appeal a court's decision if they disagree with the determination.

### Court Procedures

- A guardian can only be appointed by a judge of Orphans Court of the Court of Common Pleas in the county that the alleged incapacitated person lives, owns real estate or is hospitalized.
- Anyone who is interested in the welfare of the alleged incapacitated person may petition the court. Often, the person who is the petitioner is also the person requesting the guardianship appointment.
- The petitioner must give the alleged incapacitated person a written notice 20 days prior to the hearing.
- The petitioner must be able to provide evidence supporting the need for guardianship to the court.

### Responsibilities and Limitations of Guardians

- A guardian will include the incapacitated person in decision making whenever possible.
- A guardian is required to file annual reports with the court. Often this is done with the assistance of an attorney.
- A guardian may not prohibit marriage or consent to a divorce.
- A guardian cannot, unless otherwise court ordered, give consent for an abortion, sterilization, or the removal of a healthy organ.

### Other useful resources:

- [Guardianship in Pennsylvania](#)
- [Seeking Guardianship for a Loved One](#)

Achieva disability advocates provide information, technical assistance and individual advocacy on issues that impact children and adults with intellectual disabilities and autism and their families. We also work with state and federal legislators and policy makers to ensure that the human, civil and legal rights of people with disabilities are protected and that they are afforded services to assist them to be included in their communities. We will provide guidance, information and technical assistance to the best of our ability. Achieva advocates are available

to answer questions specific to your situation. Please contact us at 412.995.5000 x486, 888.272.7229 x 486 (Toll-Free) or log onto [www.achieva.info/contact-advocacy](http://www.achieva.info/contact-advocacy).