



ncall

National Clearinghouse on
Abuse in Later Life
www.ncall.us | ncall@ncall.us



Guardianship: FAQ for Advocates Working with Older Survivors of Abuse

Key Learning Points

- There are a number of legal mechanisms that can be utilized to support adults who might need help managing their daily affairs. These options range from least restrictive (supportive decision making) to most restrictive (full guardianship).
- Adult guardianship is a court-ordered legal arrangement where a guardian makes decisions for a person a court determines to be incapacitated (usually referred to as the ward¹), either for personal matters (guardianship of the person) or financial affairs (guardianship of the estate).

¹ While many state statutes still use the word “ward,” others use “incapacitated person,” “protected person,” or “person in need of guardian.”

- Guardianship can impact an advocate's work with older survivors in the areas of decision-making authority, confidentiality, safety planning, and legal representation.
- If a guardian is abusive, advocates can support older survivors during the process of having the guardian's authority reviewed by the court.
- Alternatives to guardianship exist, including powers of attorney, representative payees, supported decision-making agreements, and limited guardianships, which can help older survivors maintain some power and control.

Please note that adult guardianship laws vary from state to state. You can locate your state's statute with this [chart from the American Bar Association](#). This resource is intended for informational purposes only and does not constitute legal advice.

Q1: What is guardianship?

A1: Guardianship is a legal arrangement where a court appoints an individual (the guardian) to make decisions for a person (often referred to as the ward) who is determined to be incompetent or incapacitated. There are typically two types of guardianships:

1. **Guardianship of the Person:** The guardian makes decisions about personal matters such as healthcare, housing, and social services.
2. **Guardianship of the Estate:** The guardian manages the incapacitated person's finances and property.

One person may be appointed to serve as both guardian of the person and of the estate. Guardianships can be tailored depending on the incapacitated person's individual circumstances and needs, allowing them to retain certain rights as appropriate. A guardianship may only be ordered by a court.

Note: You may also hear the term "conservatorship" in some jurisdictions, which typically refers to court-supervised management of financial affairs and

may have different requirements than guardianship. As noted above, laws and terminology vary by state.

Q2: How could guardianship impact an advocate's work with older survivors of abuse?

A2: It is important for advocates to remember that a person under guardianship is still the client – not the guardian. However, guardianship can significantly impact an advocate's work with older survivors in several ways:

- **Decision-making:** The guardian, not the incapacitated person, has the legal authority to make decisions. This can affect the survivor's ability to choose services or leave an abusive situation.
- **Confidentiality:** Guardians may have the right to access information about the incapacitated person.
- **Safety planning:** Strategies may need to involve or consider the guardian's role and authority.
- **Legal representation:** The guardian might have the power to retain or dismiss legal counsel for the incapacitated person.

In each of these situations, advocates should review the guardianship order to understand the scope of the guardian's authority.

Q3: Can a person under guardianship still work with an advocate?

A3: A person under guardianship can still work with an advocate. However, the extent of independent decision-making may be limited depending on the terms of the guardianship. Advocates should:

- Review the guardianship order to understand its scope. Guardianship is only legal if it is ordered by a court. The incapacitated person and the guardian should each have a copy of this document.

Explain to the victim the limits of confidentiality given their guardianship status. Discuss what information might need to be shared with the guardian and why. The release for a legally incapacitated person must be signed by the person's guardian. However, for VAWA funded programs, consent may not be given by the guardian if they are the abuser of the incapacitated person.² Individuals who do not work in VAWA-funded programs should follow their agency's policies pertaining to survivors who have been harmed by a legal guardian.

- Work with the guardian to understand the specific areas the court has provided the guardian authority, and the areas the survivor retains decision-making right. Identify areas where the victim can still make decisions independently.
- Encourage a collaborative approach between the victim, guardian, and advocate. Facilitate discussions that include the victim in the decision-making process.
- Respect the survivor's wishes and autonomy to the greatest extent possible within the legal constraints of the guardianship. Only share information with the guardian that is necessary for the victim's care and safety.
- Note that in most jurisdictions, the guardian has the right to access the incapacitated person's confidential information related to areas in which they have authority, as outlined in the order. However, this does not require automatic disclosure of all information to the guardian.
- Involve both the victim and guardian in safety planning discussions. Ensure the guardian understands the dynamics of abuse and the importance of the victim's input in safety strategies.

² **Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision (34 U.S.C. § 12291(b)(2))**
<https://www.justice.gov/ovw/page/file/1006896/dl?inline=>

Q4: I am serving a client and receive a call from someone who says they are the client's guardian. Can I speak to this person without a Release of Information? Do I need to validate the guardianship before I speak with them? What other steps should I take?

A4: Follow your organization's policy related to working with victims who have guardians. If there is no policy in place, consider the following:

- If someone contacts you stating that they are the client's guardian, maintain confidentiality just as you would until you confirm they are, in fact, the court-appointed guardian.
- Sample response: "By law, I cannot provide any information about clients we may or may not be working with. If you are the guardian of someone you believe to be receiving services, please send a copy of the guardianship order to us at (email or fax)."
- Until you receive confirmation that the client has a guardian, work with them as you would any other client.
- Once you have verified that a client is under guardianship, review the guardianship order to determine whether a release is needed to speak with the guardian. If you have questions as to the scope of the guardian's authority, seek advice from a legal advocate or attorney.
- Any information-sharing with a guardian should always be survivor-centered:
 - Give the survivor notice
 - Discuss options with the survivor
 - Let the survivor see the records you are sharing
 - Have the survivor present when you discuss anything with the guardian

Q5: What should an advocate do if the guardian is the person committing the abuse?

A5: If the guardian is the abuser, the situation requires immediate attention:

- **Help the victim document the abuse:** Support the victim in keeping detailed records of any disclosed or observed abuse.
- **Report the abuse:** Review your state's mandatory reporting statute to determine if you are required to report the abuse, and follow your agency's mandatory reporting policy.
- **Seek legal intervention:** Refer the client to an attorney or legal services provider, who can contact the probate court that issued the guardianship to report the abuse and request a review of the guardianship.
- **Plan for the victim's immediate safety:** Develop a safety plan with the survivor that accounts for their unique situation.
- **Advocate for the older adult:** Support the older survivor's priorities and wishes while they work with legal services to petition for the removal of the abusive guardian and appointment of a new guardian.

Q6: How can an advocate support a survivor who wants to challenge or modify their guardianship?

A6: To support a survivor challenging their guardianship:

- Provide information about their rights and the process for asking the court to review a guardian's conduct.
- Connect them with legal resources specializing in elder law or guardianship issues.
- Help gather evidence demonstrating the survivor's capacity to make decisions.
- Assist the survivor in documenting how the current guardianship may not be in their best interest.

- Support the survivor through the legal process, including accompanying them to court hearings if permitted.
-

Q7: Are there less restrictive alternatives to guardianship that can support older survivors while maintaining their autonomy?

A7: Yes, there are several alternatives to consider:

- **Powers of Attorney:** Allow the individual to designate someone to make decisions on their behalf.
- **Representative Payee:** Manages federal benefits without full guardianship.
- **Supported Decision-Making Agreements:** Formal or informal arrangements where trusted supporters assist in decision-making.
- **Living Trusts:** Can help manage financial affairs without court intervention.
- **Limited Guardianship:** Restricts the guardian's authority to specific areas, preserving some autonomy.

Advocates should discuss these options with survivors and refer them to legal professionals for personalized advice.

Q8: What resources are available for further information and support?

A8: Resources may vary by state and locality. Consider connecting with:

- Your state's guardianship support or protection services
- Local disability rights organizations
- State domestic violence coalitions

- State sexual assault coalitions
- State bar associations' lawyer referral services
- Elder law attorneys in your area
- Adult Protective Services (where appropriate)

Advocates should research resources specific to their state and local area, as guardianship laws and available services vary significantly by jurisdiction.

Important Note: Guardianship laws vary significantly from state to state. This resource provides general guidance, but advocates should always consult with legal professionals familiar with their jurisdiction's specific laws and procedures when working with cases involving guardianship.