

Understanding the 17 A Guardianship Option for Parents

Presented by
Kiersten Bartolotta, Esq.



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House Keeping

Please keep your microphone muted.

Please put questions in chat or raise your hand.

Polls

Survey at End

Thank you!




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WHERE DIGNITY MEETS JUSTICE

Join Nassau Suffolk Law Services as we continue to illuminate pathways to justice under our new name, **Legal Services of Long Island (LSLI)**. Help us guide our communities and neighbors in need toward accessible free legal services for all.


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Who We Are And What We Do

- Over 6,000 legal cases each year
- Free Legal Services for eligible Long Island Residents
- Direct representation, phone consultations
- Brief service or referrals
- Offices in Hempstead, Islandia, Riverhead
- Case handling staff includes attorneys, paralegals, and social workers
- Partnerships with Community Agencies



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Office Locations

Hempstead:
1 Helen Keller Way 5th Fl
Hempstead NY 11550
(516) 292-8100

Islandia (Western Suffolk):
1757 Veterans Hwy Ste 50
Islandia NY 11749
(631) 232-2400

Riverhead (Eastern Suffolk):
400 W. Main St Suite 200
Riverhead, NY 11901
(631) 369-1112



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Our Programs

Family

- Domestic Violence Family Court Project (Suffolk)
- Child Support Defense Project

Disability & Health-Related Projects

- HIV Unit
- Mental Health
- ICAN - Advocates in Managed Long-Term Care
- Education and Disability Rights (Special Education and Rights of Developmentally Disabled)
- Disability Advocacy Project (SSD/SSI Appeals)



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Our Programs

Housing

- Civil Unit (Eviction Prevention)
- Foreclosure Project

Other

- Consumer Debt
- Education Debt Consumer Advocacy Project
- Veterans Rights
- Human Rights Project
- Public Benefits
- Adult Care Facility Unit
- Senior Citizen Project (Nassau)
- Pro Bono Project (Suffolk)
- Volunteer Lawyers Project (Nassau)
- Community Legal Help Project



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Legal Support Center for Advocates:

Advocates call (631) 232-2400 for assistance:
Sharon Campo - x3368 Cathy Lucidi - x3324
Hannah Fitzpatrick- x3343

- Provide Technical Support to Advocates
- “Advocates” include legislative staff, social workers, outreach workers, medical personnel, and guidance counselors
- Host Community Trainings
- Publish Newsletters



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POLL



POLL

**What type of advocate are you?
Have you ever called LSCA?**



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Visit our Website www.legalservicesli.org

- All About Our Programs
- Sign up for our “Legal Lessons”
- Trainings
- “Self-Help” Resources
- Other Events



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Just a Note

Legal Services of Long Island makes every effort to keep legal educational materials up to date. The information contained in this material is not legal advice. Legal Advice depends upon the specific facts of each situation. These materials cannot replace the advice of competent legal counsel.



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Objective

Objective: As advocates, it may be helpful for you to be able to guide parents to resources and services that assist parents of developmentally disabled or intellectually disabled individuals, once they reach the legal age of adulthood.

Today we will:

- Explore the option of 17A Guardianship available for parents of disabled individuals aged 18 and older, or those approaching adulthood regarding decision making involving the individual's health, welfare and finances.
- Learn the specific requirements of 17A guardianship petitions to assist clients in the process of making a decision on what is right for them.

Questions?

- At the end of the presentation
- Because of the broad scope of 17A, and the consideration of the best interest of the individual, each case varies in the evaluation done by the court.
- in other words, we don't have all the answers, or it may be outside the scope of this presentation.



Objective



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Why does a parent/caretaker need a 17A Guardianship or other types of decision-making assistance?

17A Guardianship



- **Children under 18 years old** -In New York State, parents of a person with an intellectual or developmental disability have the rights and abilities to make decisions for their child until they turn 18 years old.
- **Once the child turns 18 years old**, New York State law indicates that he/she is a competent adult who should be able to manage their everyday lives on their own thus parents with disabled children will not have the ability to make decisions regarding the child's welfare, health, personal, and/or finances/property.



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Options



Options

When a parent has a child who is developmentally disabled or intellectually disabled and turning 18 years old:

- **Power of Attorney**- Contract which gives one person the ability to make financial decisions for the other- **The person must have capacity at the time** of the creation of the document and give consent.
- **Health Care Proxy**- A legal document that allows a person to appoint someone they trust to make medical decisions for them if, and only if they can't make the decision for themselves. **The person must have capacity at the time of creation and give consent.**
- **Article 81**- Is a more specific type of guardianship, tailored to the person. It is often used in lost or diminished capacity cases such as with an elderly client or if an accident or trauma occurred but can be used in the circumstances of a younger person. It is tailored to the needs of the individual- not as broad in scope as 17A. Process is more complex and costly.
- **17A Guardianship**- Broad application and generally for life. It is based on a medical diagnosis and supported by doctors' reports. Used when there is a belief the condition is permanent and there is no likelihood of the condition improving. The disabled individual is deemed incapable of managing himself/herself or his/her affairs.

Important to note: 17A guardianship is the most restrictive type of guardianship. It covers a lot of decisions that can be made for an individual. The law does not grant the court discretion to tailor the scope of the guardianship to the individual person's needs. Courts are careful in this decision and need all the requested information to make the final decision that is in the best interest of the disabled individual.



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How to Help Parent with a Developmentally or Intellectually Disabled Child Turning 18 or 18+ who are Thinking About These Options

1. Parents can call a private attorney to get a consultation about what would be the best option for their child. The attorney will also answer questions and provide a cost for their services.
2. Parents can consider doing one of the options themselves. (DIY court system-[Guardianship 17A Petition - DIY Forms | NY CourtHelp \(nycourts.gov\)](#))
3. If they are eligible, and based on the individual case, parents may be able to have Legal Services of Long Island assist them with the paperwork.- Upcoming Clinic.



How to Help



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FREE UPCOMING LEGAL CLINIC Advice, Counsel and Information on 17A Guardianships for Parents/Caretakers

Legal Services of Long Island is hosting a FREE Advice and Counsel Clinic in December of 2024 for eligible low-income Suffolk County residents at our Islandia office.

Once a client is determined eligible, they can meet with an attorney to receive advice and counsel about the 17A Guardianship process. Clients can ask questions and get feedback about their specific situation on how to file a 17A Guardianship for their intellectually or developmentally disabled child. This clinic is appropriate for parents of disabled children aged 17 years old or older.

Interested Suffolk County residents should call 631-232-2400 ext. 3331 by December 1, 2024 to be screened for eligibility.



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What is a 17A guardian?

A 17A guardian is someone (person or corporation) who is appointed by a Surrogate Court to help protect the interests of an intellectually or developmentally disabled adult and make decisions for them, when they are unable to do so for themselves.

The intellectually or developmentally disabled adult may have one of the following conditions: (This is not all inclusive)

- Cerebral palsy
- Epilepsy
- A neurological impairment
- Autism

Source: [Guardianship of a Developmentally Disabled Person | NY CourtHelp \(nycourts.gov\)](https://www.nycourts.gov/court-help/guardianship-of-a-developmentally-disabled-person/)



What is a 17A guardian?



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Two Types :Guardianship over Person and Property

Person - If the proposed guardian would like to only manage the disabled party's personal well-being (i.e. health, safety, welfare) they would apply to be a Guardian of the Person.

Property - If proposed guardian would like to only manage the disabled party's property (i.e. Inheritance, real estate) they would apply to be a Guardian of the Property

Both - Guardian can be appointed to be guardian of both person and property



Guardianship over Person and Property



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When a Parent Decides that a 17 A Guardianship is Appropriate

How to start the process:

The petition is filed in Surrogate Court in the county where the child lives. It can be done when the disabled individual is under 18 years old or 18 years old and older.

The New York Court System has a lot of information for parents/proposed guardians who may be interested in learning more about the process. Some people find this helpful and some find it overwhelming:

[Guardianship of a Developmentally Disabled Person | NY CourtHelp \(nycourts.gov\)](https://www.nycourts.gov/guardianship-of-a-developmentally-disabled-person/)



-We often hear from parents they have tried to begin the process of 17A Guardianship -with or without an attorney- but due to certain difficulties or not understanding the full process, they are unable to complete it.

17A Guardianship



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Need to know

Sometimes we hear that people consider the 17A guardianship process difficult and burdensome. Being prepared and understanding the process will help parents in their decision.

Below are some of the considerations that parents will need to think about. As advocates, it may be helpful for you to understand some of the process:

1. **Who will be the proposed guardian or co-guardians? (must be 18 or older)**
 - Guardians must be legal residents or legal citizens of the US
2. **Who will be the standby guardian and alternative guardian (must be 18 or older)?**
 - Same rule as above
3. **Parents, siblings, and half siblings, spouse of the disabled individual or adult children of the disabled individual who are not asking the court to be a guardian or standby guardian are "interested parties." They will need to sign consents (called waivers) to allow for the proposed guardians.**
 - If they refuse or are missing- this may not be a barrier, but the court will order additional steps to be taken.



Need to know

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Need to know (con't)

What kind of proof does a parent/proposed guardian need to submit as to why the child needs a 17A Guardian appointed?

This varies and the court will make a final determination based on what is submitted to the court.

- **Petition and accompanying paperwork (including birth certificate) - Filing fee \$20** (can make a request for it to be waived)
- **2 signed Certifications** called Affidavits or Affirmations completed by medical teams. This can be two M.D.s or one M.D. and one licensed psychologist. There must be one physician who is familiar with or has professional knowledge of the care and treatment of the person they are making the certification for.
- **Medical reports**



Need to know (con't)



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Need to know (con't)

Parents/Proposed guardians must sign the petition and acknowledge:

- Whether they or anyone in the household of the disabled person has been the subject of a report for child abuse(CPS)
- Whether they have ever been convicted of an offense against the law (not including traffic offense, or youthful offender)
- Whether they have any pending criminal charges

For these, if the answer is in the affirmative, the Court will ask for an explanation to determine next steps. It does not automatically end the petition process or disqualify the proposed guardian.



Need to know (con't)

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Need to know (Con't)

The Petition & accompanying paperwork is extensive and specific.

After the Petition is filed -Surrogate Court will direct:

- Everyone who lives in the household of the disabled person who is 18 or older must be fingerprinted
- Everyone in the household of the disabled person who is 18 or older must inform the court as to their addresses going back 28 years including month and year.
- Service- Court will instruct proposed guardian/petitioner on who and how to serve interested parties who may not have consented.

Court Process:

- A hearing is most likely held - disabled person will **most likely be present but in certain circumstance, does not have to be present.**
- The Proposed Guardian does not need an attorney at the hearing.
- Guardian Ad Litem may be appointed- in certain circumstances, the Court will appoint an attorney to review some of the facts of the petition. Ex: a CPS "unfounded report." They help give the Court clarity on issues.
- "Best Interest of the individual" is the standard



Surrogate Court's Process:

Surrogate Court is helpful with these petitions and often will send the petition back to the Proposed Guardian/Petitioner with noted corrections. The process can be long and tedious, but it can be completed if it is the right option for the family.

Need to know (Con't)



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Thank you for attending!

Upcoming Presentations/Events:

Knowledge is Power: Legal Steps After a Domestic Violence Incident
on October 30th 1-2pm

Education Disability Rights Presentation 11/12 1-2pm- Sign up coming soon

Emergency Housing Training 12/6 1-2pm – Sign up coming soon

If you have any questions, please contact Kiersten Bartolotta, Esq.
631-232-2400

Check out our website at
www.legalservicesli.org



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