

Article 81 Guardianship Basics

What is a guardian?

Guardianship gives a person or organization the legal right to make certain decisions for another person.

Who qualifies for a guardian in NYS?

A court must find that a person is:

- Unable to meet some or all of their personal and/or financial needs; **and** is
- Incapable of making reasonable decisions; **and** is
- At risk of harm because they do not recognize that they need help; **and**
- There are no alternatives available to meet the person's needs that are less restrictive than guardianship

Serious illness, disability, dementia, or other conditions, alone, are *not* enough for someone to be appointed an Article 81 guardian. See [Section 81.02 of the Mental Hygiene Law](#) for complete requirements.

What does “incapacitated” mean?

A judge will look at whether a person can adequately understand and appreciate the nature and consequences of an inability to meet their needs. Do they recognize they need help? Do they understand the risks if they take a certain action or don't act at all?

There are 2 types of adult guardianship in NYS:

Article 81: Guardianship for incapacitated adults. A judge gives the guardian only the powers needed to meet an incapacitated person's needs. This may include powers to manage a person's finances and property, personal needs, or both. Our information focuses on Article 81. This comes from [Article 81 of the Mental Hygiene Law](#).

Article 17-A: Only for an adult with an intellectual or developmental disability, or traumatic brain injury. It automatically gives a guardian the power to make *all* decisions. This comes from [Article 17-A of the Surrogate's Court Procedure Act](#). Note that Article 81 guardianship is also available for this population. For more information on 17-A, go to [Court Help](#).



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Major limitations of a guardian

A guardian cannot consent to mental health or substance use treatment over a person's objection. They also cannot admit a person into a mental health facility or treatment program over their objection.

Court Process

Anyone interested in the wellbeing of a person can start a case. It requires drafting and filing documents with the court and a hearing before a judge. The process is complex and can take months, if not longer.

What if there is an emergency and a guardian is needed quickly?

Sometimes there is an urgent need for a guardian to be appointed due to imminent risk of harm or harm that is already occurring. A person can request a temporary guardian when starting a guardianship case or at any point during the proceeding. The standard for this appointment is extra high since it appoints a guardian without a full hearing. A judge needs to see that there is "danger in the reasonably foreseeable future" to the health and wellbeing of the person or "danger of waste, misappropriation, or loss of property." If appointed, the temporary guardian would have *only* those powers needed to address the specific risk.

More information on guardianship and the court process:

[NYS Court's Guardianship Page](#)

[Guide to Becoming a New York Guardian Without a Lawyer](#) (CUNY Law School, includes sample forms)

[Guardianship Prevention and Support Helpline](#)