

Guardianship by Country:
Resource for Second World Congress on Adult Guardianship

 Country: Finland Population: 5, 46 million Number of people under Adult Guardian/Guardianship: approximately 51 000
Relevant legislation Guardianship Services Act (442/1999) (in force since Dec.1 st , 1999) The Act on Continuing Powers of Attorney (648/2007) (in force since Nov.1 st , 2007)
Key terminology Guardian Ward (person under guardianship) Trustee (appointed by a continuing power of attorney)
What types of guardianship exist? (personal welfare/financial affairs) Normally, the guardian is assigned to look after the property and financial affairs of the client. If the court has so ordered, the guardian shall be competent to represent the ward also in matters pertaining his/her person, if the ward cannot understand the significance of the matter. The guardian shall not be competent to give a consent to marriage or adoption on the behalf of the ward, nor to acknowledge paternity, make or revoke a will, or represent the ward in other matters of comparably personal and individual nature. A person's competency to make agreements or undertake other obligations may in certain cases endanger his or her financial interests. These cases are especially likely to occur when the individual makes important decisions while failing to take the advice of the guardian. In such cases, the District Court may, upon petition, restrict the competency of the person. For instance, the Court may order that he or she is incompetent to incur debt or to enter into transactions concerning given property. The District Court must not restrict the competency of the person more than what is necessary for protecting him or her. The Act on Continuing Powers of Attorney, which came into force in November 2007, provides means to make preparations for a possible decreased functional capacity. By issuing a continuing power of attorney you can make sure that, if you are struck with functional incapacity, your affairs will be attended to by a trustee that you have appointed yourself.
Aside from personal appointments, who has the power to appoint an adult guardian? A guardian can be appointed by a Registry Office or a District Court. If a person considers his or her own situation so precarious that the support and help of a guardian would be necessary, he or she may have one appointed by filing a written petition

with the Registry Office. The petition should indicate why a guardian is necessary and who should be appointed as the guardian. Normally, a medical certificate should be annexed to the petition, indicating that the petitioner is mentally competent to consent to the appointment of a guardian. The Registry Office will hear the petitioner in person before it makes a decision on the petition.

It is also possible to file a written petition for the appointment of a guardian with a District Court. In addition to the person in need of help, such a petition may also be filed by a parent, spouse, child or other similar close person. The petition may also be filed by the Registry Office.

What criteria do the court need to consider when deciding the need for a guardian?

According to the legislation, a guardian can be appointed when one's mental capacity has been reduced e.g. by serious illness or advanced age, with the result that one cannot self look after one's interests or take care of one's affairs. A statement from a doctor is always needed. However, a guardian is appointed only if one's affairs cannot properly be managed in any other way.

In practice the court as well as the Registry Office generally requires further evidence of the need for these measures, for example a report on the circumstances of the person and evidence that the person's problems could not be solved by less restrictive means.

What is the potential duration of an order?

temporary or for a limited time

Can a person under guardianship seek review of a guardian's appointment and/or a guardian's decisions?

The District Court may terminate the task of a guardian when he or she so petitions or when the client no longer is in need of guardianship. The petition for termination may be filed by the client himself or herself, the guardian, or the Registry Office. The petition for termination may also be filed by the parent, spouse, child or other person close to the client. The Registry Office may also terminate a guardianship. This, however, requires that the client and the guardian file a petition for termination together. The guardian's task must be terminated also if he or she proves to be unsuitable for it. The task of a guardian is terminated as a matter of course if the client dies.

In order to ensure that no one is under guardianship without reason, the Registry Office reviews all guardianships every four years and determines whether they should continue.

Who can be appointed as guardian? (eg family members, private guardian, private body, public body)

Suitable, consenting persons with sufficient skill and experience are eligible for appointment as a guardian. In many cases, a child, spouse or other person close to the person in need of help will act as his or her guardian.

It is also often the case that the appointment is given to a Public Guardian, who performs such services as a public employee. The public authorities must ensure that every needy

person has access to the services of a Public Guardian close to where they live. The Public Legal Aid Offices are responsible for arranging the public guardianship services.

What are the responsibilities of an adult guardian? (eg what principles or guidelines must they comply with)

The guardian must act in the best interests of the ward and take into account the ward's wishes when making decisions on their behalf.

In addition of financial affairs, the guardian must see to it that the client receives suitable treatment, care and rehabilitation. If necessary, the guardian must be in contact with e.g. the municipal medical and health care authorities.

The guardian must see to it that the client has enough of his or her own money for personal use.

How are adult guardians monitored and/or supported? (eg overseeing body, support for volunteer guardians)

The guardian must keep accounts of the client's assets and liabilities and of the events of the accounting period. In the beginning of his or her appointment, the guardian must present the Registry Office with an inventory of the assets and liabilities of the client. Thereafter, the guardian must draw up regular, normally annual, account statements and submit these to the Registry Office.

The guardian needs the **permission of the Registry Office** for certain important transactions to be concluded on behalf of the client. A permission is required e.g. for the buying and selling of real estate and the pledging of property as collateral for debt. The guardian is not empowered to donate the assets of the client.

Does an existing enduring Power of Attorney (personal welfare/financial) remove the need for guardianship when capacity is lost?

Yes. However if the Registry Office sees that the continuing Power of Attorney is not meeting the ward's needs, the enduring Power of Attorney can be extinguished in favour of guardianship.

What costs are associated with guardianship and who pays? (eg application costs, court costs, yearly service fees)

The guardian is entitled to compensation for expenses and a reasonable fee. Information on the compensation and fee is entered in the account statement to be given to the Registry Office.

Additional comments (Interesting elements of your country's system than are not covered above)

Links in English:

<http://www.finlex.fi/en/>

<http://www.oikeus.fi/en/index/esitteet/holhoustoimenpalvelut.html>

<http://www.oikeus.fi/en/index/esitteet/edunvalvontavaltuus.html>