

Guardianship by Country:

Resource for Second World Congress on Adult Guardianship

 Country: Germany Population: 81.8 million Number of people under Adult Guardian/Guardianship: approximately 1.3 million
Relevant legislation German Guardianship Law is a federal law and part of the German Civil Code.
Key terminology “Rechtliche Betreuung”: supported decision making Ward: person under guardianship
What types of guardianship exist? (personal welfare/financial affairs) No full (or plenary) guardianship. There is a strong focus on supported decision-making. Limited guardianship for court specified duties is possible. In the majority of cases, guardians are responsible for oversight of medical treatment and financial management. Wards retain full legal capacity.
Aside from personal appointments, who has the power to appoint an adult guardian? Only the Probate Court (Betreuungsgericht) has the power to appoint an adult guardian.
What criteria do the court need to consider when deciding the need for a guardian? Where there is a concrete need, the court can appoint a guardian for a person over 18 years old, who, as a result of mental illness or disability, is incapable of managing their own affairs. A guardian should not be appointed against the “free will” of the person concerned – but the court has to consider whether, as a consequence of their mental illness or disability, the ward is capable of “free will”.
What is the potential duration of an order? At most, seven years. In an emergency, a temporary order can be made for up to 6 months.
Can a person under guardianship seek review of a guardian’s appointment and/or a guardian’s decisions? The decisions of the court of 1 st instance (Betreuungsgericht – Amtsgericht) to appoint a guardian can be reviewed by the court of 2 nd instance (Landgericht). The ward can represent themselves at such hearings. A guardian’s decisions are not generally reviewed by the court. However, if a conflict of interest develops between the guardian and the ward, or the guardian fails to respect the rights of the ward or otherwise acts inappropriately, the court may act to replace the guardian.
Who can be appointed as guardian? (eg family members, private guardian, private body, public body) Family members, volunteer guardians, professional guardians (for example, lawyers),

“Betreuungsvereine” (non-profit advocacy organisations) and public guardians.

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

All decisions made by guardians must take account of the ward’s past and present feelings and wishes, benefit the ward and be the least restrictive option available. By law, every guardian is obliged to be in personal contact with his/her client and to cooperate with them.

Guardians are guided by the three principles of Necessity (no guardian’s decisions in areas that the ward can manage independently or with the support of family/friends); Autonomy (the ward should lead a self-determined life to make as many of his/her own decisions as possible); and Preservation of rights (every adult has fundamental rights, including to marry and to vote).

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

Guardians are required to submit annual reports to the court. These annual reports are reviewed by guardianship auditors employed by the court. The guardian also needs court approval for ‘special decisions’, including major medical treatment decisions. In general, it is the duty of the guardianship court and the Office of the Public Guardian to support the guardians. Further, non-profit advocacy organisations provide support for family member and volunteer guardians.

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

Yes. An enduring power of attorney is possible in the areas of health care and personal welfare as well in financial matters.

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

It is free to make a guardianship application. And, in most cases, adults under guardianship do not pay court costs. However, if a ward has monetary assets of 50.000 € or more they are required to pay an annual court fee of around 500 €. The Ministry of Justice pays an annual guardianship service fee (1848 €) to the guardian on behalf of wards with limited means. Otherwise, the ward pays the fee.

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

Germany’s current adult guardianship laws were developed with full awareness of the crimes and discriminations committed against people with disabilities during the Nazi period of 1933-45. The probate judge plays a central role under current law. They hold responsibility for fundamental decisions in relation to the ward and they have personal contact with the ward. Further, guardianship hearings are accessible to all, taking place in private houses, hospitals and old people’s homes as well as in courts.