



## Information Sheet Nr. 25

# Legal Guardianship

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With advanced age, it is possible that a mental (age-related) disease or a psychological, emotional or physical disability can temporarily or permanently hamper the ability to take care of one's personal affairs.

For the benefit of the affected individual, legal guardianship is assigned by the Guardianship Court (a division of the District Court) for life situations where help and support are needed. A guardianship hearing is initiated by an application filed by the affected person or by third parties (e.g. relatives, neighbours, employees of a nursing service). The Court only orders guardianship when it is absolutely necessary. The running costs for the guardianship must be assumed by the affected individual, or, in absence of financial means, by the judiciary authority. Guardianship is generally not required when power of attorney has been assigned.

Guardians are foremost persons who are close to the affected individual (mainly relatives), but can also be employees of a service organization, the care authority, or volunteer care-givers, or professional care providers. If a care directive has already been set up, the individual stated as agent therein is appointed guardian following examination by the Court.

The responsibility of the guardian is judicial and extrajudicial representation of the affected person for tasks the Court determines individually, as well as for personal guardianship to the extent required. Regardless of the responsibility for which a legal guardian was appointed, he or she may take action only in the case where the affected person is no longer able to do so for medical reasons. In doing so, the guardian must always consider the wishes of the affected person and is controlled by the Court through delivering semi-annual and annual reports. The guardian is not obliged to provide personal care, such as house cleaning, grocery shopping, etc. The German Civil Code (BürgerlichesGesetzbuch, BGB) does not mandate a typical scope of responsibilities but leaves it to the judge to determine responsibilities that most closely correspond to the needs of the person concerned.

### **Potential scope of responsibilities**

#### **Financial affairs**

This is a very broad responsibility. It comprises regulating financial affairs. Here too, the guardian must first determine whether the affected person is able to responsibly handle financial affairs or not. The guardian must regularly document to the Court income and expense of, for example,

- Asset management to ensure standard of living
- Assertion of benefit claims (e.g. exemption from co-payment, rent support application)
- Settling of potential debt

### **Living arrangements**

This area of responsibilities includes regulations regarding living arrangement, e.g.

- Commitment to liberty-depriving or liberty-reducing institutions and similar measures
- Transfer (e.g. to a full in-patient stay facility)

### **Affairs concerning health and medical treatment**

This area of responsibilities usually include decisions pertaining to medical interventions of both out-patient as well as in-patient nature, for example,

- Consent to tests, surgery and treatments
- Paperwork for hospital admission
- Consent to administration of medications

### **Affairs concerning the home**

The Constitution defines the home as a legally protected right and therefore affairs concerning the home are generally listed as separate responsibilities by the Guardianship Court, for example,

- Giving up the home
- Rental payments
- Housing benefit claims

Since financial arrangements play a role here, these responsibilities are usually extended with the responsibility for securing assets.

### **Postal- und Telecommunication affairs**

The Constitution also defines these affairs as a legally protected right; therefore they are also listed as separate responsibilities. The guardian may make decisions concerning telecommunications, receive and open affected person's mail, and can deliver it to affected persons or not, depending on their circumstances.

### **Representation to authorities, hospital and nursing home management**

This responsibility is basically already included in the affairs concerning stay, assets and health. Nevertheless, it is emphasized here again in order to avoid potential loopholes in legal representation.

A representation of this kind is especially important in nursing homes to ensure that potential complaints by patients can be passed on to management.

In addition to these responsibilities, for some legal transactions the Guardian must request separate approval by the District Court. These include taking on credit, inheritance disputes, dissolving bank accounts, commitment to homes resulting in deprivation or reduction of liberty, terminating lease agreements.

**The staff at the nursing support centre is happy to advise you.**

**Free service number: 0800 59 500 59**

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The responsible body for the nursing support centre are the insurance companies of Berlin and the state Berlin.