



Information sheet No. 25

Legal guardianship

A legal guardian should be considered when an adult is temporarily or permanently no longer able **to take care of all or some** of their personal affairs due to a mental illness or a mental, emotional or physical impairment.

Initially, close relatives may be appointed as legal guardians, but employees of a guardianship association, the guardianship authority or volunteer guardians as well as professional guardians may also be appointed. If a guardianship decree has already been drafted, the person requested in the decree will be appointed as a guardian once the guardianship court has reviewed the decree. When making the appointment, the guardianship court must always take into account the person's preferences.

The principle of necessity applies – guardianship can only be arranged if this is necessary. This is not the case if other assistance is available and sufficient. This also includes actual support from close relatives or social services.

Further support – the guardianship authorities have a legal obligation to support people in suitable cases in such a way that legal guardianship is no longer necessary.

Duty to fulfil wishes – the guardians are required to manage the affairs of the person receiving long-term care in such a way that they can organise their life according to their wishes as far as possible.

Protection of the home – the guardians may only give up the home occupied by the person receiving care if this is in accordance with their wishes. If guardians intend to give up the living quarters of the person being cared for, this must be reported to the guardianship court immediately, stating the reasons and the views of the person being cared for. In certain cases, a court will need to issue authorisation.

For married couples and for people living in a registered civil partnership, a **marital emergency right of representation** applies in emergency health situations. This does not apply to spouses who are separated. In cases where the affected person is temporarily unable to manage their health care needs due to unconsciousness or illness, spouses are granted a legal right of emergency spousal representation for a period of no more than **six months**.

This covers the consent for medical examinations and treatment, consent for medical interventions, agreeing contracts for treatment and hospitalisation, agreeing contracts for urgent courses of rehabilitation, as well as some other urgent regulatory powers.

The spouse's right of emergency representation takes precedence over an existing legal guardianship or provisional power of attorney.

A guardianship procedure may be initiated by the affected person themselves or by a third party at the local court in their place of residence.

A statutory guardianship is generally not necessary if a comprehensive provisional power of attorney is already in place.

The purpose of legal guardianship is to represent the affected person in and out of court in the areas of responsibility specified by the guardianship court.

Legal guardians are subject to the supervision of the guardianship court by submitting interim reports and annual reports.

The ongoing costs for legal guardianship are covered by the supervised persons themselves or, if they are financially unable to pay, by the judicial fund.

Potential areas of responsibility include housing arrangements, asset management or health care.

For certain areas of responsibility that affect the right of the person receiving care to decide for themselves, an explicit order from the guardianship court is required by law.

These are, for example, custodial accommodations and arrangements, determining the usual place of residence of the assisted person abroad, determining contact, deciding on telecommunications, including electronic communication, receiving and opening letters.

The previous areas of responsibility, property care, housing matters, health care and determination of residence will continue to exist for the time being and must be adapted accordingly by 1st January 2028.

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

Free service number: 0800 5950059

www.pflegestuetzpunkteberlin.de

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