

Guardianships



Published April 21, 2026
Robert Abrams, Esq., Partner
at Abrams Fensterman, LLP

New York Guardianship Law: Protecting Those Who Cannot Protect Themselves

A guardianship in New York is a court-supervised legal process in which a judge appoints a guardian to make personal care and/or financial decisions for an adult who can no longer make those decisions independently. New York recognizes two primary frameworks: Article 17a of the Surrogate's Court Procedure Act for adults with developmental or intellectual disabilities, and Article 81 of the Mental Hygiene Law for adults who have lost capacity due to Alzheimer's disease, dementia, traumatic brain injury, or stroke. Courts define the guardian's authority based on the individual's **specific needs** and always seek the least restrictive intervention available.

Abrams Fensterman, LLP has handled thousands of guardianship matters across New York State. Courts regularly appoint the firm's attorneys as court evaluators, counsel to alleged incapacitated persons, and guardians. The practice represents petitioners, individuals opposing guardianship, and healthcare institutions requiring legal authority to act on behalf of incapacitated patients.

What Is a Legal Guardianship in New York

Guardianship is a judicial determination that an adult lacks the capacity to manage some or all personal and financial affairs, and that appointing a guardian is the least restrictive means of protecting them. It is distinct from a power of attorney, which requires the individual to voluntarily delegate authority while they still have capacity. When that capacity is gone, guardianship may be the only available option.

A guardian's authority may cover personal care decisions such as medical treatment and living arrangements, financial matters such as managing accounts and real property, or both. The court defines that scope at the time of appointment.

Article 17a Guardianship: Adults with Developmental Disabilities

Article 17a applies to adults with developmental or intellectual disabilities, including Down syndrome and autism. Proceedings are filed in Surrogate's Court and typically result in a plenary guardian of the person,

the property, or both. Parents of children with lifelong disabilities often initiate Article 17a proceedings as the child approaches age 18 to preserve legal authority over healthcare, finances, and placement decisions in adulthood.

Article 81 Guardianship: Adults Who Have Lost Capacity

Article 81 applies when an adult has lost capacity due to an illness or injury that occurred in adulthood, including Alzheimer's disease, dementia, stroke, or traumatic brain injury. Proceedings are filed in the New York Supreme Court. Unlike Article 17a, Article 81 is individualized: the court constructs the guardian's authority based on the person's specific functional limitations rather than imposing blanket control.

Article 81 proceedings require the court to appoint a court evaluator, a neutral attorney or mental health professional who independently investigates whether guardianship is necessary, what level of authority is appropriate, and whether a less restrictive alternative exists. The alleged incapacitated person has the right to legal counsel throughout.

Article 17a vs. Article 81: Which Applies

The correct proceeding depends on the origin and nature of the disability, not simply current functioning. Key distinctions:

- Article 17a applies to lifelong developmental or intellectual disability, filed in Surrogate's Court, typically resulting in plenary guardianship.
- Article 81 applies to capacity lost in adulthood due to illness or injury, filed in the Supreme Court, with authority tailored to the individual's specific limitations.
- An attorney experienced in both frameworks is essential to filing in the correct court and securing the appropriate scope of authority.

The New York Guardianship Process

A guardianship proceeding generally follows this sequence: the petitioner files in the appropriate court with a description of the person's condition and the authority requested; the court appoints a court evaluator in Article 81 cases and schedules a hearing; the evaluator investigates and submits a report; the court holds a hearing at which any party may present evidence; if guardianship is warranted, the court issues an order defining the guardian's authority; and the guardian takes an oath, files a bond if required, and assumes ongoing reporting obligations including annual accountings filed with the court.

Abrams Fensterman counsels clients through every stage, from petition preparation through post-appointment compliance and any subsequent modification or removal proceedings.

Contested Guardianship and Defense

Not every guardianship proceeds without dispute. Family members may disagree about whether guardianship is necessary, who should serve, or how broad the authority should be. Abrams Fensterman represents:

- Parties opposing the appointment of a guardian or challenging the proposed guardian's fitness.
- Clients seeking the removal or replacement of an existing guardian for misconduct or failure to account.
- Individuals demanding formal accounts from guardians who have mismanaged assets or neglected reporting duties.

Healthcare Provider Guardianship

Hospitals and skilled nursing facilities frequently encounter patients who lack the capacity to consent to treatment or authorize placement, with no available surrogate. Abrams Fensterman files guardianship petitions on behalf of healthcare institutions and, once a guardian is appointed, coordinates with the firm's healthcare collections and reimbursement recovery team to secure payment for services rendered and applicable public benefits, including Medicaid.

Why Families and Institutions Choose Abrams Fensterman

Courts throughout New York State appoint the firm's attorneys as court evaluators and counsel to alleged incapacitated persons, reflecting a level of judicial recognition that distinguishes the practice statewide. The guardianship group works directly with the firm's [Health Law](#), [Elder Law](#), and [Real Estate Law](#) practices to address the full scope of an incapacitated person's needs, from treatment decisions and long-term care planning to management or sale of real property, without requiring clients to engage multiple firms. Offices are located on Long Island, in Brooklyn, White Plains, Albany, and Rochester.

Related Practice Areas

Becoming a Guardian in New York, Elder Law and Estate Planning, Special Needs Planning, Mental Health Law, Health Law.

Contact Our Law Firm

For further information about guardianship proceedings, please [contact our law firm](#) on Long Island at 516-328-2300, in Brooklyn at 718-215-5300, White Plains at 914-607-7010, Rochester at 585-218-9999 or Albany at 518-535-9477 to schedule an initial consultation.

Frequently Asked Questions

What is the difference between Article 17a and Article 81 guardianship in New York? Article 17a applies to adults with developmental or intellectual disabilities and is filed in Surrogate's Court, typically resulting in a plenary guardian. Article 81 applies to adults who have lost capacity due to illness or injury in adulthood, is filed in the Supreme Court, and results in a guardian with authority tailored to the person's specific limitations.

Who can file a guardianship petition in New York? Any person eighteen or older, any corporation, or any healthcare facility may file. In most cases, the petitioner is a spouse, adult child, or other close family member. Healthcare institutions may file when no family member is available or willing.

Does the alleged incapacitated person have rights in the proceeding? Yes. The person has the right to be present at hearings, to retain legal counsel, and to present evidence. In Article 81 cases the court appoints an independent court evaluator who investigates and reports directly to the judge.

How long does a guardianship proceeding take? An uncontested proceeding may be resolved in a few months. Contested matters involving expert witnesses and extended hearings can take considerably longer. Emergency applications may be heard on an expedited basis when there is an immediate risk of harm.

What are a guardian's ongoing obligations in New York? A guardian must file annual reports with the court accounting for all decisions, income, and expenditures related to the incapacitated person. Failure to comply can result in removal, surcharge, and civil liability.

Can a power of attorney eliminate the need for guardianship? A properly executed power of attorney may, provided it was signed while the person had capacity, and grants sufficient authority. When capacity is already gone or the existing power of attorney is inadequate, guardianship is typically the only available remedy.

Can an existing guardian be removed? Yes. Courts may remove a guardian who fails to file accountings, misuses assets, or neglects the person's care. Any interested party may petition for removal, and the court may act on its own motion.

How does Abrams Fensterman serve healthcare institutions in guardianship matters? The firm files guardianship petitions on behalf of hospitals and skilled nursing facilities, secures the appointment of a personal needs and/or property management guardian for incapacitated patients, and then coordinates with its healthcare collections team to recover payment and secure applicable public benefits, including Medicaid.