

Mental Incapacitation in New York

When an individual is incapable of making decisions regarding personal and financial needs on their own, they are generally considered to be mentally incapacitated, from a legal perspective.

Article 81 and the Laws Protecting Mentally Incapacitated Individuals in NY

Article 81 of the New York Mental Hygiene Law provides safeguards for incapacitated individuals and judicial scrutiny of guardians appointed to their care. The state recognizes the need for an incapacitated person to retain as much autonomy as possible while ensuring that he/she is protected from harm.

Some people may only need a guardian for property management, for example, or to help with paying bills. Article 81 was designed to prevent guardians from being given excessive authority over an individual's freedom to make personal decisions.

The Scope of a Guardian's Power

The court begins by assessing an individual's functional ability to determine if it is in his/her best interest to have a guardian for the management of personal and/or financial needs. If it is determined that guardianship is necessary, the court is required to base the scope of the guardian's power on the individual's needs, keeping these powers as limited as possible.

In many cases, a person who suffers from diminished mental capacity is still able to make certain decisions without the assistance of a guardian. In these situations, the individual *should* be permitted to retain as much personal freedom as possible.

Sadly, it is not uncommon for the court to give a guardian too much authority, to the possible detriment of the alleged incapacitated person. This is one of many reasons it is so important to work with an attorney during guardianship proceedings.

A [NYC estate planning lawyer](#) can help you determine how to proceed if you believe a loved one is in need of a guardian.

Who Can Be a Guardian?

In New York, anyone older than 18 can be a guardian, as can a public agency, such as social services, or even a corporate entity. A guardianship case can be brought by the incapacitated person, the executor of an estate or a trustee, or a nursing facility at which the individual is a patient or resident. Broadly speaking, “anyone who is concerned with the welfare” of the alleged incapacitated person can bring a guardianship case.

The appointment of a guardian is not final; a Court can remove the guardian, or modify his/her powers if deemed necessary. Legal challenges to guardianship are often brought by family or friends who are concerned that the guardian is not acting in their loved one’s best interests.

Contact Lissner & Lissner LLP Today

If you believe a loved one could benefit from guardianship, or you are concerned that a guardian is not acting in a loved one’s best interests, the skilled legal team at Lissner & Lissner LLP can help. Cases involving challenges to guardianship can be stressful, time-consuming, and highly emotional. Do not attempt to go through this difficult process without the help of an estate planning attorney experienced in guardianship cases.

Contact us today at [\(212\) 307-1499](tel:2123071499) for a consultation about your case.