



## ARTICLE 17-A GUARDIANSHIP IN NEW YORK: A PRACTICAL GUIDE FOR FAMILIES

PRESENTED BY:  
AARON E. CONNOR, ESQ., MANAGING PARTNER



## OUR TEAM OF ATTORNEYS



Louis Pierro



Aaron Connor



Frank Hemming



Peter Strauss



Anthony Khatchoui



Theresa Skaine



Arkley Mastro



Michael Mullaney



Verley Brown



Patricia Whelan



Brent Stack



Tommaso Marasco



Adrianna Mihalek



Ethan Van Vorst



Avery Mickle

### **Serving New York State Residents Through Offices in:**

Albany, New York City, Garden City, Hudson, Ronkonkoma, Lake Placid, Utica  
Serving Clients in NJ, CT, and FL

---

## THE AGE 18 TRANSITION

### When a Child Turns 18

- Legal adult in New York
- Full decision-making authority
- Parents lose automatic control
- Medical privacy laws apply
- Benefits eligibility
- FERPA



---

## COMMON QUESTIONS PARENTS ASK

### Parents often ask:

- Will I still be able to talk to doctors?
- What happens if my child signs a contract?
- How do we protect them from exploitation?
- Do we need guardianship?

Many families first learn about guardianship when they suddenly realize their legal authority ends at age 18.

## WHY THIS CAN CREATE CHALLENGES

- Difficulty understanding consequences
- Inability to manage finances
- Vulnerability to exploitation
- Health & safety concerns



## WHAT IS GUARDIANSHIP?



### Guardianship Basics

- Court proceeding
- Legal authority granted
- Powers defined by law

---

## WHEN IS IT APPROPRIATE?



- Intellectual disability
- Developmental disability
- Traumatic brain injury
- Autism spectrum disorder
- Significant cognitive limitations

---

## GUARDIANSHIP IS NOT ONE-SIZE-FITS-ALL

### **Some individuals may need:**

- No legal intervention
- Decision-making support
- Limited financial help
- Full guardianship

The goal is the least restrictive option that still provides protection.

---

## TYPES OF GUARDIANSHIP IN NEW YORK

**Article 81**

**Article 17-A**

**Guardianship  
of a Child**

---

## ARTICLE 81

- For incapacitated individuals (18+)
- Judge grants guardian powers only necessary to meet specific needs
  - finances, property, personal needs, etc.
- Must be least restrictive alternative
- Focus on functional limitations



## ARTICLE 17-A



- Surrogate's Court
- Adults (18+) with I/DD
- Broad authority to make decisions
- Most restrictive option
- Powers similar to a parent

### Article 17-A

- **Court:** Surrogate's Court
- **Standard:** Diagnosis based
- **Powers:** Broad authority
- **Evidence:** 2 Doctors, or 1 Doctor and 1 Psychologist
- **Used for:** Intellectual or Developmental Disability

### Article 81

- **Court:** Supreme Court
- **Standard:** Functional incapacity
- **Powers:** Tailored authority
- **Evidence:** Hearing and proof
- **Used for:** Any incapacity

---

## IS 17-A RIGHT FOR YOUR FAMILY?

---

### Important Consideration

- Article 17-A = **Full decision-making authority**
  - Medical
  - Financial
  - Residential
  - Personal

---

## RIGHTS LOST UNDER GUARDIANSHIP

**Depending on the decree, the individual may lose the ability to:**

- Sign contracts
- Make certain financial decisions
- Consent to medical treatment
- Decide where to live
- Manage government benefits

## LESS RESTRICTIVE ALTERNATIVES



- Power of Attorney
- Health Care Proxy
- Supported Decision-Making
- ABLE Account
- Supplemental Needs Trust
- Pooled Income Trust
- Article 81 Guardianship

## POWER OF ATTORNEY (POA)

- Allows a person to authorize someone they trust to help manage financial matters.
- Examples may include:
  - Paying bills
  - Managing bank accounts
  - Handling benefits or insurance issues

The individual must **understand what they are signing** when the POA is created.



---

## HEALTH CARE PROXY (HCP)

Allows a person to appoint someone to make medical decisions if they cannot make or communicate those decisions themselves.

### The health care agent may:

- Speak with doctors
- Access medical records
- Make treatment decisions when necessary



**Important:** The individual must have capacity at the time the proxy is signed.

---

## SUPPORTED DECISION-MAKING

### Allows a person with a disability to:

- Keep legal rights
- Choose trusted supporters
- Receive help understanding decisions
- Instead of a guardian making decisions for them, the individual receives help understanding and evaluating choices.
- SDMNY (Supported Decision-Making New York).

---

## ABLE ACCOUNT

- 
- Tax-advantaged savings account for people with disabilities.
  - Limited yearly deposits (\$20,000 in 2026)
  - Benefits include:
    - Funds grow tax-free
    - Can be used for disability-related expenses
    - Balances under \$100,000 do not affect SSI eligibility
    - Can be used to pay recurring expenses

---

## SUPPLEMENTAL NEEDS TRUST (SNT)

- A Supplemental Needs Trust allows money to be set aside for a person with a disability without jeopardizing eligibility for government benefits such as:
  - SSI
  - Medicaid
- Trust funds can be used to pay for expenses not covered by public benefits
- **Third-Party SNT** – funded by parents or relatives (no payback)
- **First-Party SNT** – funded with the individual's own assets (payback required)

---

## POOLED TRUSTS

- A Pooled Trust is a trust administered by a **nonprofit organization** that allows individuals with disabilities to **maintain eligibility for certain means-tested government benefits**, such as Medicaid or SSI.
  - Funds placed into the trust are managed by the nonprofit and used to pay expenses that benefit the individual.
- **Asset Pooled Trust** – used when a person has **excess resources** (such as savings, inheritance, or settlement funds) that could otherwise affect benefit eligibility
- **Income Pooled Trust** – used when a person’s **monthly income exceeds asset thresholds**, allowing excess income to be deposited into the trust and used for approved expenses

---

## HOW TO START A 17-A CASE



### Where to File

- Surrogate’s Court
- County of residence
- Article 17-A of SCPA

---

## WHO QUALIFIES FOR 17-A

- Must have intellectual or developmental disability (I/DD)
- Condition must originate before age 22
- Must impair ability to manage affairs
  - Mental illness alone usually requires Article 81



## WHO CAN PETITION?

- Parent
- Close family member
- Interested adult (18+)
- Authorized corporation

---

## REQUIRED DOCUMENTS

- 17-A Petition
- Oath & Designation
- Guardian affidavit
- Medical certifications
- Waivers from interested parties
- Citation



---

## MEDICAL PROOF REQUIRED



- 2 physicians

**OR**

- 1 physician + 1 psychologist
- Diagnosis confirmation
- Functional limitations

---

# WHAT HAPPENS NEXT?

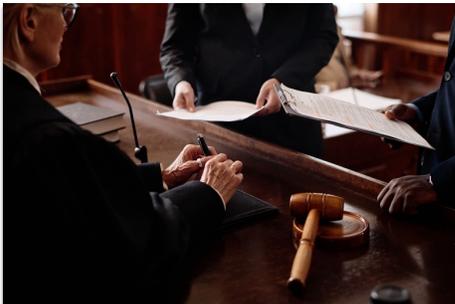
---

## After Filing

- Court review
- Background check
- Citation issued
- Hearing scheduled

---

## THE HEARING



- Closed proceeding
- Judge presides
- Testimony & evidence
- Possible respondent appearance
- Objections considered

## IF APPROVED

- Written decision
- Decree issued
- Letters of Guardianship
- Legal authority begins



## TIMELINE OF A GUARDIANSHIP CASE



### Typical Timeline:

- Prepare petition: 2-4 weeks
- Court review: 4-8 weeks
- Hearing scheduled
- Decree issued

Typical case: 2-4 months

## RESPONSIBILITIES OF A 17-A GUARDIAN

### Ongoing Duties

- Act in best interest
- Medical decisions
- Financial oversight (if applicable)
- Residential decisions
- Court reporting requirements

## TWO TYPES OF 17-A GUARDIANSHIP

### Guardian of the Person

- Medical decisions
- Residential decisions
- Educational decisions
- Personal care

### Guardian of the Property

- Manage assets
- Handle income
- Oversee benefits

---

## WHAT GUARDIANS CAN AND CANNOT DO

### **Guardians *can*:**

- Consent to medical care
- Manage finances (if property guardian)
- Choose residence
- Apply for benefits

### **Guardians *cannot* automatically:**

- Change a will
- Force sterilization
- Commit someone to a psychiatric facility
- Override rights without court approval

---

## WHAT GUARDIANSHIP DOES NOT DO

### **Guardianship does not:**

- Make the person less independent
- Eliminate their rights entirely
- Mean they cannot work
- Prevent relationships

---

## KEY TAKEAWAYS

### Planning Ahead Matters

- Start before age 18
- Gather medical documentation early
- Explore alternatives
- Seek experienced counsel
- The goal is the least restrictive support



35

---

## GUARDIANSHIP AND GOVERNMENT BENEFITS

### Guardians may help manage:

- SSI
- Medicaid
- Housing programs
- Vocational services

### Guardianship does not replace:

- Representative payee
- Supplemental Needs Trust planning

## EXAMPLE SCENARIO 1: ALEX

### Age 18 and has autism

- Graduated high school with support services
- Works part-time at a grocery store
- Communicates clearly with family and coworkers
- Understands daily routines and basic decisions
- Has difficulty understanding complex financial contracts



***What level of support might Alex need?***

## ALEX - DISCUSSION

### **For Alex, or someone similarly situated, families might consider:**

- Power of Attorney for financial assistance
- Health Care Proxy for medical decisions
- Supported Decision-Making

### **Full guardianship may not be necessary if Alex can understand decisions with support**

- Many individuals with autism live independently with the right support system

## EXAMPLE SCENARIO 2: JAMIE



### **Age 20 and has an intellectual disability**

- Non-Verbal
- Requires 24/7 supervision
- Cannot manage money or understand financial decisions
- Requires assistance with medical care and daily living

***Would guardianship be appropriate here?***

## JAMIE - DISCUSSION

### **For Jamie, or someone similarly situated, families often pursue:**

- Article 17-A Guardianship, because a guardian may need authority to:
  - Make medical decisions
  - Manage finances
  - Apply for benefits
  - Determine residential arrangements

**The goal is to provide protection while acting in the individual's best interests**

---

## THINK ABOUT YOUR FAMILY'S SITUATION

---

### Ask yourself:

- What decisions does my child handle independently?
- Where might they need support?
- What legal tools could help?

---

## WHY YOU NEED AN EXPERIENCED ATTORNEY



- Determine if Article 17-A is appropriate
- Prepare and file all required court documents accurately
  - Including medical certifications and notices
- Navigate Surrogate's Court process, hearings, and potential objections
- Advise on the guardian's powers, responsibilities, and long-term planning implications



**THANK YOU!**

**QUESTIONS?**

**Aaron Connor, Esq.**  
**Managing Partner**

[info@pierrolaw.com](mailto:info@pierrolaw.com)

518-459-2100

[www.pierrolaw.com](http://www.pierrolaw.com)

Request a FREE 30-minute Consultation Today!