

# Module 10: Guardianship Rights: Who Is Responsible for What?

July 2022



Welcome to Module 10 – **Guardianship Rights: Who Is Responsible for What?** Module 10 introduces participants to what guardianship means, the role and responsibilities of a guardian as well as the rights of an individual receiving guardianship.

## Objectives:

- Define guardianship and what it means.
- Identify the role of a guardian.
- Discuss who is responsible for what between a guardian and the individual receiving guardianship.
- Learn about financial wellness education when an individual has a guardian.

## Value of This Module:

**Myth:** An individual with a guardian will have all their decisions made for them so they do not need to be educated about finances.

**Reality:** Everyone has a right to know about their finances and have some input, even if they are not making all the decisions. In order for the best financial wellness choices to be made, understanding the responsibilities of a guardian and the rights of an individual with a disability who has a guardian is important for both parties. Also, not all guardianships give the guardian decision-making control of a person's money. For example, there are limited guardianships that may just relate to healthcare decisions. It is important to know what level of guardianship has been granted by the court.

# MODULE 10: GUARDIANSHIP RIGHTS

## FACILITATOR PREPARATION



### Facilitator Preparation:

- Prior to this workshop, the facilitator should read or review several resources:
- Review websites:
  - [illinoisguardianship.org](http://illinoisguardianship.org)
  - [www2.illinois.gov/sites/gac/Pages/default.aspx](http://www2.illinois.gov/sites/gac/Pages/default.aspx)
  - [www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Fact-sheet.aspx](http://www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Fact-sheet.aspx)
  - [guardianship.org/what-is-guardianship](http://guardianship.org/what-is-guardianship)
  - [equipforequality.org](http://equipforequality.org)
  - <https://www2.illinois.gov/sites/gac/Pages/Supported%20Decision%20Making.aspx>
- Review PowerPoint presentation for Module 10: Guardianship Rights
- Complete all activities to familiarize yourself with each activity.
- Identify and invite guest speaker for Making Connections in your Community segment.

### Additional Optional Resources:

- AAIDD Webinar on Guardianship and Supported Decision-making: [aaidd.org/education/education-archive/2017/09/28/default-calendar/guardianship-and-supported-decision-making-.WcvHbmhSza9](http://aaidd.org/education/education-archive/2017/09/28/default-calendar/guardianship-and-supported-decision-making-.WcvHbmhSza9)
- Identifying Alternatives to Guardianship: [dds.dc.gov/sites/default/files/dc/sites/dds/publication/attachments/Alternatives to Guardianship Stoplight Tool.pdf](http://dds.dc.gov/sites/default/files/dc/sites/dds/publication/attachments/Alternatives_to_Guardianship_Stoplight_Tool.pdf)
- National Guardianship Association Position Statement on Guardianship, Surrogate Decision-making and Supported Decision-making: [guardianship.org/wp-content/uploads/2018/09/SupportedDecision\\_Making\\_PositionStatement.pdf](http://guardianship.org/wp-content/uploads/2018/09/SupportedDecision_Making_PositionStatement.pdf)
- American Bar Association Resolution (on amending guardianship statutes to require that supported decision-making be identified and fully considered as a less restrictive alternative before guardianship is imposed) [americanbar.org/content/dam/aba/administrative/law\\_aging/2017\\_SDM\\_Resolution\\_Final.pdf](http://americanbar.org/content/dam/aba/administrative/law_aging/2017_SDM_Resolution_Final.pdf)

## Gather:

- Laptop and LCD projector
- Sign-in sheet
- Easel pad and easel
- Markers
- PowerPoint presentation (*Make copies\* if you would like to distribute to attendees*)
- Agenda (*Make copies if you would like to distribute to attendees*)
- Activities (*Make copies of activity handouts*)
- Homework assignment (*Make copies*)
- Evaluation (*Make copies*)

*\*Don't forget large print copies, in size 20 font, if requested.*

# MODULE 10: GUARDIANSHIP RIGHTS

## PRE- AND POST-TEST EVALUATION



Location of session: \_\_\_\_\_

Date of session: \_\_\_\_\_










Trainers: \_\_\_\_\_, \_\_\_\_\_

Participant type (please check one):  
 Person with a developmental disability  
 Parent  
 Other, please specify \_\_\_\_\_

Participant name (optional): \_\_\_\_\_

**Please complete this section BEFORE the beginning of this training session.**










### 1. How much do you know about the following topics?

	I don't know anything about this	I know a little about this	I know a lot about this
a. What guardianship means.			
b. The responsibilities of a guardian.			
c. The rights of a person who has a guardian.			












The remainder of the form will be completed at the end of this training.

2. How much do you know about the following topics?

	I don't know anything about this	I know a little about this	I know a lot about this
a. What guardianship means.			
b. The responsibilities of a guardian.			
c. The rights of a person who has a guardian.			

3. Please tell us how you felt about the following parts of the training.

	It was OK	It was really good	It was great
a. The information that I learned			
b. The way the training was organized			
c. The activities			

What is one thing you learned today?

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Based on what you learned today, what is one thing that you are going to do to take more control of your money? \_\_\_\_\_

I would recommend this training to others. \_\_\_ yes \_\_\_ no \_\_\_ maybe

**Thank you for your feedback!**

# MODULE 10: GUARDIANSHIP RIGHTS

## AGENDA



Introduction .....	5 Minutes
Overview, Purpose and Expected Outcomes .....	5 Minutes
PowerPoint Presentation & Activities.....	75 Minutes
▪ What is guardianship and what does it mean?	
▪ What is the role of a guardian?	
▪ Break .....	15 Minutes
▪ Responsibilities and rights	
▪ Financial wellness education when an individual has a guardian	
Making Connections in Your Community .....	20 Minutes
Evaluation and Closing .....	5 Minutes

**REMINDER:** Please distribute part one of the Module 10 evaluation now during the introduction. Be sure to have the participants complete the second half of the evaluation at the end of the session.

# MODULE 10: GUARDIANSHIP RIGHTS

## SCRIPT FOR TRAINER



### Introduction (5 Minutes)

Script for Trainer (corresponding PowerPoint Presentation Module 10: Guardianship Rights).

My name is \_\_\_\_\_. Welcome to Guardianship Rights, Module 10 of our Financial Wellness Training program. Today, we are going to talk about guardianship, what it means and who is responsible for what when an individual has a guardian.

Understanding guardianship and how to talk about finances when a person has a guardian is very important to an individual's financial wellness.

### Overview, Purpose and Expected Outcomes (5 Minutes)

Script for Trainer (corresponding PowerPoint Presentation Module 10).

The objectives for our training today include:

- Define guardianship and what it means.
- Identify the role of a guardian.
- Discuss who is responsible for what between a guardian and the individual receiving guardianship.
- Learn about Supported Decision-Making, a new act in Illinois
- Learn strategies on how to educate an individual on financial wellness when an individual has a guardian.

### PowerPoint Presentation & Activities (75 Minutes)

Script for Trainer (continued corresponding PowerPoint Presentation Module 10).

How many of you have heard of the term guardianship?

Ok, let's talk about guardianship and what it means.

As defined by the Illinois Guardianship Association, guardianship is the appointment by the court for a surrogate/substitute decision-maker for a person who is over the age of 18 and is unable to make decisions due to some level of incapacity. When a person reaches the age of 18, they receive all of their adult legal rights.

If they are unable to understand these rights and exercise them due to lack of decisional capacity, a judge can appoint a guardian to protect that individual and make all or some legal decisions for them. ([illinoisguardianship.org/resources-2/faq](http://illinoisguardianship.org/resources-2/faq))

The Illinois Guardianship and Advocacy Commission Factsheet ([www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Fact-sheet.aspx](http://www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Fact-sheet.aspx)) reminds us that guardianship is needed when a person is unable to make and communicate responsible decisions regarding their personal care or finances due to a mental, physical or developmental disability. A mental, physical or developmental disability alone is not sufficient for the appointment of a guardian. The fact that a person is elderly, mentally ill or developmentally or physically disabled does not necessarily indicate a need for guardianship. The extent to which a guardian is allowed to make decisions for a person is determined by the court based on a thorough clinical evaluation and report.

### **True or False?**

Guardianships are all the same and, once an individual is appointed a guardian, the guardian is able to make ALL decisions for the individual they have been appointed to assist.

This statement is false, but it is easy to see how many of us, including a guardian and the person they are helping, might think that this is a true statement.

In Illinois, there are two major types of guardianship. A court judge is required to determine the **least restrictive** type of guardianship to be awarded, based on the needs of the protected individual.

**Plenary (Full) Guardianship** is the most restrictive form of guardianship. All adult rights are removed from the protected person and transferred to the guardian, who generally has the power to make all decisions about services, healthcare, personal care and/or finances for the person with a disability. Certain decisions due require further order of the court such as admission to a mental health facility or sterilization.

**Limited Guardianship** is the less restrictive form of guardianship. Depending on the decision-making capacity of the person with a disability, this type of guardian is only able to exercise rights for the protected person in the areas specified by the court.

There are five (5) major types of limited guardianship. They include medical, financial, education, residential and habilitation, which includes daily support services.

A **temporary guardian**, in anticipation of emergencies, may be appointed by the court for the period between the filing of a petition for guardianship and the conclusion of the court hearing where the need for guardianship is decided. Temporary guardianship may last no longer than 60 days and is a means to ensure that an alleged person with a disability receives immediate protection. It is intended only as a short-term remedy and is utilized only where a demonstrated harm or emergency exists.



To recap, if a guardian is appointed for you by the court, then the court and the guardian believes you need help making important choices in your daily life. They are appointed to help you make those choices. A guardian will make choices for you depending on what the judge has determined you need help within your life. This does not mean that you should not be consulted and asked about your preferences. However, it does mean that the guardian makes the final decision.

## **Activity #1**

Start by asking the group what are some requirements for being a guardian and who might serve as a guardian?

(Trainer asks the group and makes a list on the easel pad).

Examples might be:

- Parent
- Sibling
- A person over 18 years of age
- Best interest of the individual with a disability
- Agency

In Illinois, any person at least 18 years of age who is of sound mind, has not been convicted of a serious crime and is acceptable to the court may be named a full or limited guardian of the person or property of an adult with disabilities. A guardian must be a legal resident of the United States. The person must prove to the court that they are able to provide guardianship support for the person in the areas named and be active in their life. Any agency, public or private, may serve as guardian if the court finds that the agency is capable of providing active guardianship support. An agency providing residential services (where you live) to a person with disability may not be appointed as their guardian to ensure there are no conflicts of interest. A banking institution may be appointed guardian of the money or property for a person with a disability, often called their estate, but not a guardian of the person.

It is important to keep in mind that family members are not automatically named the legal guardian for their relative with a disability. In all cases, the court will determine the need for guardianship and who should serve as a guardian. A family member may petition the judge to be named guardian and the person with a disability may express a preference as to his or her guardian. If the person with a disability expresses a preference, the judge will take this into consideration. However, the judge appoints whomever will make the best guardian and act in the best interest of the person with a disability, regardless of the party's relation to the person. It is important to know that only a judge can appoint a guardian.

Now that we have identified what guardianship means and who can be a guardian, let's talk about the role and responsibilities of a guardian.

## Activity #2

Start by asking the group to think about what kinds of decisions individuals with developmental disabilities might need help with from an appointed guardian.

(Trainer asks the group and makes a list on the easel pad).

Examples might be:

- Paying bills
- Choosing a bank account
- What to buy
- Managing money and making major purchases
- Where to live
- What doctor to go to and when to go
- Having a medical procedure done
- Where to work
- Living situations
- Marriage

*Have a discussion with the group about the different decisions that individuals must make in their life related to finances. It is important to remember that the type of guardianship will have an impact on the decisions that an appointed guardian may make for the individual with a disability. It is also important to remember that guardians can and should have conversations with the individual they are appointed to assist so that the individual has some input into the direction of their life, services, healthcare, etc.*

**Who is responsible for what?** This leads us to a conversation about the roles and responsibilities of both the guardian and the individual they are appointed to assist.

Guardians are appointed to make decisions about many different aspects of daily life. Guardians are legally and ethically required to make these decisions in the “best interest” of the individual they are supporting. This means that a guardian should talk to the person, consider what the individual wants and then make the decision that makes the most sense and is positive for the individual. Decisions a guardian makes should be customized to meet the needs of the individual and should not limit the individual from making their own decisions about aspects of their life that they are capable of controlling. A guardian should only make decisions for an individual when they are not capable of making a good or informed decision on their own.

Individuals who have a guardian have the right to have input in the choices being made for them. If you have a guardian, it is important for you to know what types of decisions a guardian is allowed to make for you. It is important to talk to your guardian about what you want and why you want to be part of certain decisions to be made in your life.

It is important to know you have the right to:

- Feel safe
- Know legally what decisions a guardian can make for you and what decisions you can make for yourself
- Have your money used for your needs
- Have opportunities to practice money management skills
- Be treated with respect by your guardian
- Talk with your guardian about what you want and need
- Ask questions about the decisions being made for you
- Choose your friends and activities as much as possible
- Participate in conversations about you
- Go to school or get a job
- Live as independently as possible

### **What is the Supported Decision Making Act?**

Some adults with intellectual or developmental disabilities may just need help in making decisions but do not necessarily need a court appointed guardian. On August, 2021 the [Supported Decision -Making Act was signed into law](#) with an effective date of February 27, 2022. Supported Decision-Making is a way for an individual to receive assistance from someone they trust instead of having a guardian make decisions for them. A Supported Decision-Making Agreement is an act between a principal, (an adult with an intellectual or developmental disability who has a Supported Decision-Making Agreement) and a supporter (an adult who supports the person with intellectual or developmental disabilities with a Supported Decision-Making Agreement).

Supported Decision-Making is ***a model of assistance for individuals with disabilities who have a range of making decisions for themselves*** and could benefit, based upon their level of ability, from having an identified supporter who would help interpret information, weigh options, and communicate the individual's decisions in identified areas of needed support. It can be an alternative to formal guardianship but can also be used within a guardianship situation. A Supported Decision-Making Agreement is signed by both the individual with a disability, their identified supporter and two witnesses defining what type of assistance will be provided based on the individual's unique needs and preferences. There is much more information available on Supported Decision Making in Illinois, learn more by visiting [www2.illinois.gov/sites/gac/Pages/Supported%20Decision%20Making.aspx](http://www2.illinois.gov/sites/gac/Pages/Supported%20Decision%20Making.aspx).

The Supported Decision-Making model does not eliminate guardianships. Guardianships will continue to be an option for individuals with disabilities who lack decisional capacity as determined by the courts.

### **Activity #3**

*Ask the group:* Based on what we have talked about so far, do you think it is important for an individual who has a guardian to be educated about their financial wellness?

*Let the group give a few reasons why they feel that an individual who has a guardian should be educated about financial wellness.*

Yes, it is important for ALL individuals to learn about financial wellness, regardless of whether they have a guardian or not.

If you have a guardian, what are some ways you can learn more about financial wellness? If you do not have a guardian, these are things you can do by yourself to get decision-making support from people you trust, as we all do. Everyone needs supported decision-making at times in their lives for important decisions (e.g., planning a trip, agreeing to a medical test or procedure, getting married, etc.).

Like all of us, you can use the strategies and techniques we have talked about so far in the different modules of this training. Depending on your individual situation, you can find ways to put them into action in partnership with your guardian.

For example:

- Create an American Dream board together to set goals for the future and talk about how you and your guardian can work together in reaching your dream. Include the decisions you can make and the decisions they will need to help you make.
- Take some financial education courses so you can better understand the decisions about money that may be made for you. Ask your guardian to review them so you can discuss these decisions together.
- Talk to your guardian about how your money is spent and ways you might be able to save to reach your goals.
- Find out if you qualify for an ABLE account and talk to your guardian about opening one to help you save. To learn more about Illinois ABLE, please visit their website [savewithable.com/il/home.html](http://savewithable.com/il/home.html).
- Communicate your wants and needs directly with your guardian.
- If you are interested in working, talk to them about possibilities of different types of jobs that might be right for you. Discuss and use the work supports you are eligible for.
- Remember, only talk to your guardian or other individuals you know personally and are able to trust with your personal information.
- Talk openly and honestly about what you want for your life.
- If you do not understand something about your finances, ask questions!

## Making Connections in Your Community: Guest Speaker (20 minutes)

Trainer will introduce the speaker: Representative from the Illinois Guardianship and Advocacy Commission or Equip for Equality.

Speaker will have 15 minutes and follow the proposed outline:

1. What is the purpose of guardianship?
2. What rights does a person with a disability have when they have a guardian?
3. What is the purpose of your organization?

Allow 5 minutes for questions.

## Evaluation and Closing (5 minutes)

Trainer should thank the participants for participating in today's training and congratulate them on the steps they took toward improving their financial wellness.

**REMINDER:** Be sure to have participants complete the second half of the evaluation and collect.

## MODULE 10: GUARDIANSHIP RIGHTS TOOLS AND RESOURCES



The following are additional tools and resources to enhance the knowledge of attendees for Module 10.

[Illinois Guardianship & Advocacy Commission](#)

[Equip for Equality](#)

[Illinois Guardianship Association](#)

[Supported Decision Making in Illinois](#)

[Illinois Self Advocacy Alliance](#)

**Additional resources on Supported Decision-making:**

[Finding the Right Fit: Decision-making Supports and Guardianship](#)

[National Resource Center for Supported Decision-making: Everyone Has a Right to Make Choices](#)

[National Resource Center for Supported Decision-making: Everyone Has a Right to Make Choices – Illinois Overview](#)

[Supported Decision-making Basics – National Resource Center on Supported Decision-making](#)