



## **Guardianship Law, Health Care Proxy and Living Will**

Important Information on  
Precautions for Emergencies

# GUARDIANSHIP, HEALTH CARE PROXY AND LIVING WILL

Even if most people tend to put off such subjects: accidents, illness or old age can mean that you are no longer able to settle important matters yourself. To safeguard your interests in such an emergency and to settle your matters, the law offers various options.

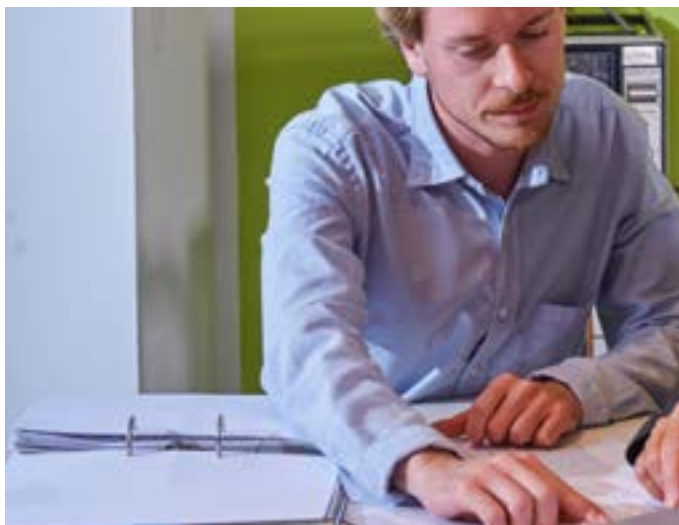
## Legal Guardianship

If, as a result of illness or disability, you are no longer able to manage your own affairs, either in full or in part, the court can appoint a legal guardian for you. As a matter of preference, an honorary guardian is to be chosen. Should this not be possible, the court appoints a professional guardian (male or female). The appointed person can act for you in precisely defined areas, the so-called areas of responsibility. These areas of responsibility are, for example, accommodation and financial matters, or health care. As a matter of principle, your wishes must be respected as long as these do not entail a considerable threat to yourself or your assets, as long as you cannot identify the danger as a result of illness and to the extent this is within reason from the guardian's point of view.

It is important that a guardian (male or female) is only appointed if this is necessary. This applies to several aspects. A guardianship is, for example, not necessary if you have an authorised spouse or an authorized person who is entitled to represent you in legal matters. This may be achieved through a health care proxy. If there is no health care proxy, a guardianship is only arranged for those areas of responsibility in which you cannot manage your own affairs yourself. And finally a guardianship may only last as long as you require it.

## Court Procedure

The Guardianship Court (Betreuungsgericht) is in charge of appointing a guardian (male or female). You yourself can submit the application for an appointment of a guardian. Third parties, for example, family members, neighbours or friends, may, however, also suggest this. The court will then examine whether a guardianship is necessary. If the court decides that a guardianship is necessary, it issues a court order which details among other things which areas of responsibility the guardianship covers and who is the guardian. Costs incurred by the



guardianship proceedings may be borne by the person placed under the control of a guardian, depending on his or her financial situation.

### **Health Care Proxy**

The purpose of the health care proxy is to authorize a trusted person to manage specific matters if you are no longer able to do this. This can be, for example, the handling of bank or insurance transactions or the conclusion of a nursing home contract. If you have not issued a health care proxy and you are (in part) no longer able to manage your affairs yourself, as a rule a court guardianship procedure will be started. In many cases a comprehensive health care proxy can avoid the initiation of a guardianship procedure. You will find further information on the website of the Ministry of North Rhine-Westphalia ([www.betreuung.nrw.de](http://www.betreuung.nrw.de)).

Against a moderate fee, you can have a health care proxy registered with the Federal Council of Notaries (Bundesnotarkammer). This ensures that the health



care proxy will later be taken into consideration. You will find further information on the website of the Central Register of Lasting Powers of Attorney ([www.vorsorgeregister.de](http://www.vorsorgeregister.de)).

### **Spousal Representation**

Since 1st January 2023 a law has been enacted which ensures that in case of acute illness spouses may mutually represent the interests of each other as far as health matters are concerned (§1358 BGB [German Civil Code]). This right of representation is limited to a maximum period of 6 months. However, this is only applicable if one spouse is not able to manage his or her own affairs due to unconsciousness or illness. The law on the representation of spouses does not apply if the spouses live separately, if a guardian has already been appointed or if a sufficiently detailed health care proxy has been issued. Therefore, it is also reasonable to issue a health care proxy if you want to be represented by your spouse.



### **Living Will**

A living will enables you to stipulate in advance if and how you want to be treated medically in certain situations provided you cannot decide on your own due to illness, an accident or old age. In a living will you can specifically say if under certain circumstances you consent or object to life-prolonging measures. A living will has to be drawn up in writing and must be signed personally. It is essential to distinguish clearly between a health care proxy and a living will. Whereas the health care proxy determines who, if need be, may legally represent your interests, the living will exclusively applies to the question of which medical treatment you want in case you are not able to express this wish yourself.

### **Further Information**

Further information on the guardianship law as well as on assistance for voluntary guardians as well



as authorized representatives can be obtained from guardianship associations and guardianship authorities in North Rhine-Westphalia. You may download a list of guardianship associations and guardianship authorities from the website of the Ministry of Justice of the state of North Rhine-Westphalia ([www.betreuung.nrw.de](http://www.betreuung.nrw.de)).

You will find further information on living wills on the website of the Ministry of Justice of the state of North Rhine-Westphalia ([www.justiz.nrw](http://www.justiz.nrw)) as well as in the brochure "Living Will", which you can download from the website of the Federal Ministry of Justice and Consumer Protection ([www.bmj.de](http://www.bmj.de)).



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[www.justiz.nrw](http://www.justiz.nrw).

All publications can be ordered by telephone on working days between  
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