



VOLS Guide to Article 81 Guardianships 法律服務 誌願者組織提供的第 81 條規定的監護權指南

This guide is for informational purposes only and does not constitute legal advice. The VOLS Elderly Project provides advice and council on Article 81 Guardianship matters but does not provide court representation. 本指南僅提供信息不包含法律建議。法律服務誌願者組織的長者項目提供針對第 81 條規定的監護權相關事宜的諮詢和建議，但不提供出庭代理服務。

What is an Article 81 Guardianship? 什麼是第 81 條規定的監護權？

[Article 81](#) of the New York Mental Hygiene law governs guardianships in New York and defines what rights and responsibilities they entail. Guardianships under Art. 81 exist to empower individuals, oftentimes family members, to take care of those who are no longer able to take care of themselves. A common example of an Art. 81 guardianship would be an adult child being appointed as guardian to their parent who is no longer able to care for themselves. Separately, there are Article 17 guardianships for minors and Article 17-A guardianships for intellectually or developmentally disabled individuals older than 18 years of age who are incapable of managing their own affairs.

《紐約精神衛生法》的第 81 條適用於紐約的監護權並定義了其中包含的權利和義務。第 81 條下的監護權是為了賦予個人（經常是家庭成員）照顧那些不能夠照顧自己的人的權力。一個第 81 條監護權下常見的例子就是一個成年子女被指定為無法照顧自己的父母的監護人。另外，第 17 條規定了未成年人監護權和第 17-A 條規定了年滿 18 歲的智力或行為能力受限的人（即無法處理個人事務的人）的監護權。

Guardianships help fill in the gap where an individual lacks the legal capacity required to execute a healthcare proxy or power of attorney, but still needs another person to be able to make medical or financial decisions and to engage in financial or legal transactions for them. Legal capacity is the concept underlying the entire idea of guardianship, and to explain this concept simply, if someone becomes unable to express their thoughts or wishes then a court may deem them legally incapacitated and therefore unable to form contracts or sign important legal documents.

監護權有助於填補個人缺乏執行醫療保健代理或授權書所需的法律行為能力，但仍需要另一個人能夠做出醫療或財務決定並為其參與財務或法律交易的空白。法律行為能力是在監護權下面的概念，簡單來說，如果有些人無法表達自己的想法或願望，那麼法院可能會認為他們缺乏法律行為能力並且不能締結合同或簽署重要的法律文件。

When is an Article 81 Guardianship needed?

什麼時候需要第 81 條規定的監護權？

Your average individual has legal capacity to execute a healthcare proxy which ensures that someone has the legal authority to act on their behalf with respect to medical decisions if they are unable to do so. Likewise, those that have legal capacity to execute a power of attorney can ensure that someone they trust has the legal authority to handle their financial affairs. If you or your loved one has legal capacity then they should execute both a healthcare proxy and a power of attorney, but if you are reading this document then you are likely in a situation where someone lacks capacity and executing these documents is no longer possible. In the situation where a person lacks legal capacity to sign a healthcare proxy and power of attorney, a guardian can be appointed who can manage their finances and ensure that they are receiving the medical care they require.

一般人都具有執行醫療保健代理的法律能力，這可以確保他們沒有能力做出醫療保健決定的時候有擁有法律權力的代表為他們做出決定。同樣，那些具有簽署授權書的法律能力的人可以確保他們信任的人擁有處理其財務事務的法律權力。如果您或您的親人具有法律行為能力，那麼他們應該簽署醫療保健委托書和授權書，但如果您正在閱讀本文件，那麼很有可能您遇到了這樣的情況：有人缺乏相應的行為能力且無法執行該文件。如果一個人缺乏簽署醫療委托書和授權書的法律能力，可以指定一名監護人來管理他們的財務並確保他們接受到所需的醫療護理。

An important thing to note is that Art. 81 guardianships are not purely limited to people who are both mentally and physically impaired to the point of incapacity. For example, if a person is still capable of managing their health care decisions then a guardian may be appointed as solely a guardian for property management, who has no control over important medical decisions. Also of note, a guardian for personal needs will supersede both a previously appointed health care proxy and the default rules for healthcare decision making under the Family Health Care Decisions Act. The default rules under Family Health Care Decisions Act provide us with a list of individuals who have priority when it comes to making decisions, starting with a person's spouse, then their adult children, their parents, their siblings, and finally their close friends. While these default rules may work in some situations you're always better off executing a healthcare proxy so there's a plan in place if the need arises.

很重要的一點需要註意的是第 81 條規定的監護權不完全是局限於精神上 and 身體上受到損害以至於喪失行為能力的人。比如，如果一個人仍然無法處理他們自己的醫療保健決策，那麼就會選出一名監護人專門進行財產管理。該監護人對重要的醫療決策沒有任何控制。

另外值得註意的是，滿足個人需求的監護人將取代之前指定的醫療保健代理人 and 《家庭醫療保健決策法》下的醫療保健決策默認規則。《家庭醫療保健決策法》的默認規則為我們提供了一份在做出決定時具有優先權的個人名單，從一個人的配偶開始，然後是他們的成年子女、他們的父母、他們的兄弟姐妹，最後是他們的親密朋友。雖然這些默認

規則可能在某些情況下起作用，但您最好執行醫療保健代理，以便在需要時有一個適當的計劃。

Guardians are generally meant to take care of their ward in the manner least restrictive to their ward, and they are meant to do so in a manner which takes the wants and needs of their ward into account. The general idea is that the guardianship is supposed to allow for maximum freedom for the ward while still allowing for their needs to be met. However, under special conditions, like an emergency, a judge may expand those powers so that the ward may be appropriately cared for.

監護人應該用對被監護人限制最小的方式照顧被監護人，並且監護人應該考慮到被監護人的想法和需求。大概的想法是，監護權應該為被監護人提供最大的自由，同時仍然滿足他們的需求。然而，在特殊的情況下，比方說一個緊急狀況，法官可以擴大權限以便被監護人被很好地照顧到。

Individuals involved in the process 監護權申請過程中包含的個人

- **The Incapacitated Person (IP)** also known as **the Ward** - the individual being placed in a guardianship. May also be referred to as the **Alleged Incapacitated Person (AIP)** when incapacity has not been established yet. 無行為能力人又稱被監護人，即處於監護中的個人。在確定喪失行為能力之前，又可以被稱作是疑似無行為能力人。
- **The Guardian** - The guardian is the individual appointed by the court to take care of the personal needs and/or the property and finances of the ward. Their specific responsibilities will be decided by the court and they may be specific or very broad depending on what the court decides is best for the ward. 監護人 - 監護人是由法院選出的照顧被監護人的個人需求和/或財產和財務的人。他們具體的職責會由法院決定，其職責可能非常具體也可能非常寬泛，這取決於法院決定的對被監護人最好的方式。
- **The Clerk of Courts/the Guardianship Office** - The clerks and the county specific guardianship offices can help answer your questions regarding court procedure rules and filing issues. They can also help you access all of the documents associated with your case. 法院書記員、監護人辦公室 - 書記員和區縣的監護人辦公室可以回答您關於法院程序規則和申請事務的問題。他們也可以幫助您獲得所有有關於您案件的文件。
- **The Court Evaluator** - A court evaluator will be appointed by the court to perform an initial investigation and interview of the AIP in order to assess their circumstances, prevent harm to them or their property, and make recommendations for the court based on the AIP's needs and capabilities. Those findings will play a major role in helping the judge make a decision during the initial hearing. 法院評估員 - 法院將指定一名法院評估員對疑似無行為能力人進行初步調查和訪談，以評估他們的情況，防止他們或其財產受到損害，並根據疑似無行為能力人的需要和能力向法院提出建議。這些調查結果將極大幫助法官在初次聽證會上做出決定。

- **The Court Examiner** - The court examiner's role is to review the guardian's reports regarding the health of the AIP and to check your accountings of the AIP's assets and finances. The guardian should be provided with the contact information of the court examiner. **法院審查員** - 法院審查員的職責是審查監護人有關疑似無行為能力人健康狀況的報告，並檢查監護人對疑似無行為能力人的資產和財務的會計核算。應向監護人提供法院審查員的聯系方式。

Who can file a petition for a guardianship?

誰可以提交申請成為監護人？

Under Article 81 almost any individual or group may file a petition to begin a guardianship proceeding, even if they don't intend to be the AIP's guardian. This means that the AIP, their care facility, or anyone else concerned with their welfare are all allowed to start the guardianship process. Additionally, while the process may seem complicated, you do not need to be a lawyer or have hired one in order to file for a guardianship, anyone is allowed to do it.

根據第 81 條，幾乎任何個人或者組織都可以提交申請開始監護程序，即便他們沒想要成為疑似無行為能力人的監護人。這意味著疑似無行為能力人，他們的護理機構或者任何與他們的福利相關的其他人都可以開始監護人程序。另外，這個程序也許看起來很複雜，但您不需要成為一個律師或者為了申請監護權而去雇一名律師，任何人都可以申請。

Who is qualified to be a guardian? 誰有資格成為一名監護人？

Under Article 81, the AIP may nominate an individual to be their guardian if they are capable. Further, there are quite a few broad categories of people who are qualified to be guardians. A guardian may be any individual over the age of 18, or any parent under the age of 18. The qualifications to be a guardian are intentionally very broad so that individuals like spouses, adult children, relatives, neighbors, and care organizations can take the steps needed to care for the incapacitated person. That said, the court will investigate a proposed Guardian and the judge has the last say as to the guardian's fitness for the role.

根據第 81 條，疑似無行為能力人可以指定有能力的個人作為其監護人。此外，有幾類有資格成為監護人的人。監護人可以是任何 18 歲以上的個人，或任何 18 歲以下的父母。監護人的資格非常廣泛，以便配偶、成年子女、親戚、鄰居和護理組織等個人可以接受照顧無行為能力人所需的步驟。也就是說，法院將調查擬議的監護人，法官對監護人是否適合該角色擁有最終決定權。

Process and Application 過程和申請

To get the process started you need to file a Petition for Guardianship with the appropriate court. You can consult the section below to help you find the appropriate court to file in. There are specific requirements for what must be in a petition under the law so it's a good idea to work off of a court form so that you provide all of the required information. As guidance for what the Petition should say, it's useful to know that New York's Mental Hygiene Law 81.02(a) states that the court may appoint a guardian for the person if it determines that doing so is necessary to provide for the needs of that person,

including food, clothing, shelter, health care, or safety, and/or to manage the property and financial affairs of that person, and that the person is either incapacitated or agrees to the appointment. “Incapacitated” means that a person is likely to suffer harm because the person is unable to provide for personal needs and/or property management, and the person cannot adequately understand and appreciate the nature and consequences of such inability (Mental Health Law 81.02 (b)). Filing will require payment of a fee, but if you are unable to pay the fee then you can have it waived so you no longer have to pay it. To do so, you need to submit a motion for what is known as “Poor Persons Relief” under Civil Practice Law and Rules 1101 - you can obtain this form from the court and file it with your Petition.

開始程序之前，您需要和相對應的法院提交監護人申請。您可以查閱以下部分，幫助您找到合適的法院提交申請。法律規定了請願書中必須有哪些具體內容，所以最好使用法院表格，以便您提供所有必需的信息。作為請願書內容的指導，有必要知道《紐約精神衛生法》第 81.02 (a) 條規定，如果法院確定有必要為該人指定一名監護人，以滿足該人的需要，包括食物、衣服、住所、醫療保健或安全，和/或管理該人的財產和財務事務，並且該人沒有行為能力或同意任命，那麼法院可以為該人指定一名監護人。「無行為能力」是指因為該人無法滿足個人需要並且/或財產管理，該人無法充分理解和認識這種無行為能力的性質和後果，因此有可能受到傷害（《紐約精神衛生法》第 81.02 (b) 條）。提交申請需要支付費用，但如果您沒有能力支付該費用則可以被豁免費用，這樣您就不必再支付了。為了獲得費用豁免，您需要提交《民事訴訟法和規則》第 1101 條規定的「窮人救濟」動議 - 您可以從法院獲取此表格並將其與您的請願書一起提交。

In addition to the Petition and any other forms that the court requires, you will also need to: (1) put other relevant parties on notice of the proceeding such as family members of the AIP; (2) complete an Order to Show Cause, which requests the AIP show why a guardian shouldn't be appointed, and a Request for Judicial Intervention, which requests that a judge be assigned to your case; (3) and, at the end of the process, obtain an Order Appointing Guardian, which appoints someone as the guardian and grants them the powers attached to that role.

除了請願書和法院要求的任何其他表格外，您還需要：(1) 讓其他相關方了解訴訟程序，例如疑似無行為能力人的家庭成員；(2) 填寫「說明原因的命令」，該命令要求疑似無行為能力人說明不應指定監護人的原因，以及「司法幹預請求」，以要求為您的案件指派一名法官；並且(3) 在該過程結束時，獲得「指定監護人命令」，該命令指定某人作為監護人並授予他們與該角色相關的權力。

After the appropriate paperwork has been filed in order to start the process, a Court Evaluator will be appointed to interview the AIP and gain a better understanding of their condition and capabilities. The Court Evaluator will produce a report on their findings which will be relied upon by the judge during the initial hearing where they decide whether or not to appoint a guardian. Generally, if the guardianship is uncontested, then this hearing will be very straightforward, but if there are any complications then it can be more substantial. If the AIP fights the appointment of a guardian then you may want to hire an attorney if possible since the hearing may become a full trial with a jury which is difficult to navigate on your own.

在提交適當的文件以啟動程序後，一名指定的法院評估員將會與疑似無行為能力人進行面談，以便更好地了解他們的狀況和能力。法庭評估員將就其調查結果提出一份報告，法官將在初次聽證會上依據該報告來決定是否指定監護人。一般來說，如果監護權沒有爭議，那麼聽證會會非常簡單直接，但如果有任何復雜的情況，那麼聽證會可能會更加實質性。如果疑似無行為能力人反對監護人的任命，那麼您可能希望在可能的情況下聘請律師，因為聽證會可能會變成由陪審團進行的全面審判，而您自己很難駕馭。

Where do you file? 您應該向哪裏提交申請？

Petitions for Article 81 Guardianships are filed with the NY Supreme Court of the judicial district, or in the county court of the county in which the AIP resides or is physically present. If you can't determine where the AIP resides, then the county in which all or most of their property is present is appropriate. Further, if there were any prior orders, such as the appointment of a temporary guardian, then that court should handle any additional proceedings regarding the guardianship of the AIP. As of February 2021, The New York Courts website provides the following chart regarding the court locations and how to contact them:

第 81 條監護權申請應向疑似無行為能力人所在的司法轄區的紐約最高法院或疑似無行為能力人居住或實際出現的縣的縣法院提出。如果您無法確定疑似無行為能力人的居住地，則適用其全部或大部分財產所在的縣。此外，如果事先有任何命令，例如任命臨時監護人，那麼法院應處理有關疑似無行為能力人監護權的任何額外訴訟。截至 2021 年 2 月，紐約法院網站提供了以下包含法院位置以及聯繫方式的表格：

County Clerks & Guardianship Offices in Metropolitan Area Courts 大都會區域法院的縣書記員和監護權辦公室	
Brooklyn 布魯克林	<p><i>Kings County Supreme Court 國王縣高級法院</i></p> <p>360 Adams Street, Brooklyn, NY 11201</p> <p>360 Adams Street, 布魯克林, 紐約郵編 11201</p> <p><i>County Clerk's Office</i> (347) 404-9818, Room: 122B</p> <p>縣書記員辦公室, 122B 室, 電話 (347) 404-9818</p> <p>To file the Oath and Designation, the bond, get your Guardianship Commission, have copies certified, and file your reports 提交誓言和任命、保證金、獲得監護委托書、認證副本並提交報告</p> <p><i>Guardianship Office</i>, (347) 296-1757, Room 285</p> <p>監護辦公室, 285 室, 電話 (347) 296-1757</p> <p>To have your bond reviewed and approved, to obtain copies of forms and for general information 審查和批准您的保證金、獲取表格和信息</p>

<p>Bronx 布朗克斯郡</p>	<p>Bronx County Supreme Court 布朗克斯郡高級法院</p> <p>851 Grand Concourse, Bronx, NY 10451</p> <p>851 Grand Concourse, 布朗克斯, 紐約郵編 10451</p> <p>Guardianship Department (718) 618-1330, Room 6M-11</p> <p>監護部門, 6M-11 室, 電話 (718) 618-1330</p> <p>To get forms, ask questions and file reports 獲取表格、提問和提交報告</p> <p>County Clerk's Office, Room 118 縣書記員辦公室, 118 室</p> <p>For bond approval and filing, to file your Oath and Designation and to get your Guardianship Commission and have it certified 保證金批准和提交、提交誓言和任命、獲取監護委托和經認證的委托書副本</p>
<p>Manhattan 曼哈頓</p>	<p>New York County Supreme Court 紐約縣高級法院</p> <p>60 Centre Street, New York, NY 10007</p> <p>60 Centre Street, 紐約, 紐約郵編 10007</p> <p>Guardianship and Fiduciary Support Office (646) 386-3328, Rm. 158</p> <p>監護和信託支援辦公室, 158 室, 電話 (646) 386-3328</p> <p>To get copies of forms, file reports, and general information 獲取表格、提交報告和獲取信息</p> <p>County Clerk's Office (646) 386-5936, Room 141B</p> <p>縣書記員辦公室, 141B 室, 電話 (646) 386-5936</p> <p>To file the Oath and Designation and the bond, get your Guardianship Commission, and obtain certified copies of it. 提交宣誓和任命書、保證金、獲得您的監護委托書並獲得一份認證過的委托書副本</p>

<p>Staten Island 史丹頓島</p>	<p>Richmond County Supreme Court 裏奇蒙郡高級法院</p> <p>Guardianship Department, 25 Hyatt Street 監護部門，凱悅街 25 號</p> <p>Staten Island, NY 10301 斯塔滕島，紐約郵編 10301</p> <p>Guardianship Office (718) 675-8586, 4th floor</p> <p>監護辦公室，四層，電話 (718) 675-8586</p> <p>To get forms, ask questions, get your Guardianship Commission, and obtain certified copies of the Commission 獲得表格，提問，獲得監護人委托，獲得認證過的委托書</p> <p>County Clerk's Office (718) 390-5389</p> <p>縣書記員辦公室，電話 (718) 390-5389</p> <p>130 Stuyvesant Place, Room 101, Staten Island 斯泰弗森特廣場 130 號，101 室，斯塔滕島</p> <p>Use this office to file Oath and Designation and all reports 使用該辦公室提交宣誓和任命書以及所有的報告</p>
<p>Queens 皇后區</p>	<p>Queens County Supreme Court 皇后縣高級法院</p> <p>88-11 Sutphin Boulevard, Jamaica, NY 11435</p> <p>蘇特芬林蔭路 88-11，牙買加區，紐約郵編 11435</p> <p>Guardianship Office, (718) 298-1040, Room 100</p> <p>監護辦公室，100 室，電話 (718) 298-1040</p> <p>To pick up forms, file the Oath and Designation and the bond, get your Guardianship Commission and certified copies of the Commission, file reports and ask questions 領取表格，提交宣誓和任命書以及保證金，獲取監護委托和經認證的委托書副本，提交報告並提出問題</p>

What does a guardian need to do? 監護人需要做什麼？

The actual responsibilities and powers of the guardian are decided on a case-by-case basis. Guardians have general duties to their ward under the law. This includes the duty to: 監護人的職責和權力是具體情況具體討論的。監護人對被監護人賦有法律上的義務，這些義務包括：

1. Exercise care, diligence, trust, loyalty, and fidelity when acting on behalf of the incapacitated person with regards to the personal and/or financial needs. 在代表

無行為能力人處理他個人和經濟上的需求時，表達關心、照顧、勤奮、信任和忠誠。

2. File an initial and annual reports for the alleged incapacitated person's finances and personal needs. 針對聲稱無行為能力人的經濟和個人需求，提交最初的和年度的報告。
3. Visit the incapacitated person not less than four times a year. 探訪無行為能力人每年不少於四次。
4. Preserve, protect, and account for the alleged incapacitated person's property and financial resources. 保存、保護、並對聲稱無行為能力人的財產和經濟來源負責。
5. Make sure the incapacitated person receives proper medical care/treatment according to their respective needs. 確保無行為能力人根據他們各自的需求得到合適的醫療保證和治療。

Guardians will also need to complete a guardianship training program which has been approved by the chief administrator. An example is the one provided by the Guardian Assistance Network, which you can find [here](#). 監護人還需要完成一個總管批准的監護培訓項目。監護人援助網絡提供的一個範例，您可以在[此處](#)找到。

This is legal information and does not constitute legal advice, nor is it an offer of representation. This guide was prepared by VOLS' Veterans Initiative in April 2021. If you have questions about the information in this guide please contact us at 347-521-5704 or pkempner@volspobono.org. 本指南僅提供法律信息，不包含法律建議，也不是法律代理的要約。這個指南是由法律援助志願者組織的退伍軍人倡議項目在 2021 年 4 月準備的。如果您對這份指南中的信息有疑問，請撥打 347-521-5704 或者發郵件至 pkempner@volspobono.org 聯繫我們。