



VOLS Guide to Article 81 Guardianships

法律援助义工组织提供的 关于第 81 条规定的监护权指南

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.

本指南仅提供信息不包含法律建议。法律援助义工组织的长者项目提供针对第 81 条规定的监护权相关事宜的咨询和建议，但不提供出庭代理服务。

What is an Article 81 Guardianship?

什么是第 81 条规定的监护权？

[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.

《纽约精神卫生法》的第 81 条适用于纽约的监护权并定义了其中包含的权利和义务。第 81 条下的监护权是为了赋予个人（往往是家庭成员）照顾那些不能够照顾自己的人的权力。第 81 条监护权下一个常见的例子就是一个成年子女被指定为无法照顾自己的父母的监护人。另外，第 17 条规定了未成年人监护权和第 17-A 条规定了年满 18 岁的智力或行为能力受限的人（即无法处理个人事务的人）的监护权。

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.

*** 本指南仅供参考，并不构成法律建议。***

监护权有助于填补个人缺乏执行医疗保健代理人或持久授权书所需的法律行为能力，但仍需要另一个人能够做出医疗或财务决定并为其参与财务或法律交易的空白。法律行为能力是在监护权下面的概念，简单来说，如果有些人无法表达自己的想法或愿望，那么法院可能会认为他们缺乏法律行为能力并且不能缔结合同或签署重要的法律文件。

When is an Article 81 Guardianship needed?

什么时候需要第 81 条规定的监护权？

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.

一般人都具有执行医疗保健代理的法律能力，这可以确保在他们没有能力做出医疗保健决定的时候有拥有法律权力的代表为他们做出决定。同样，那些具有签署授权书的法律能力的人可以确保他们信任的人拥有处理其财务事务的法律权力。如果您或您的亲人具有法律行为能力，那么他们应该签署医疗代理人委托书和持久授权书，但如果您正在阅读本文件，那么很有可能您遇到了这样的情况：有人缺乏相应的行为能力且无法执行该文件。如果一个人缺乏签署医疗代理人委托书和授权书的法律能力，法庭可以指定一名监护人来管理他们的财务并确保他们接受到所需的医疗护理。

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.

很重要的一点需要注意的是第 81 条规定的监护权不完全局限于精神上 and 身体上受到损害以至于丧失行为能力的人。比如，如果一个人仍然无法处理他们自己的医疗保健决策，那么法庭就会选出一名监护人专门进行财产管理。该监护人对重要的医疗决策没有任何控制。

另外值得注意的是，满足个人需求的监护人将取代之前指定的医疗代理人 and 《家庭医疗保健决策法》下的医疗保健决策默认规则。《家庭医疗保健决策法》的默认规则为我们提供了一份在做出决定时具有优先权的个人名单，从一个人的配偶开始，然后是他们的成年子女、他们的父母、他们的兄弟姐妹，最后是他们的亲密朋友。虽然这些默认规则可能在某些情况下起作用，但您最好执行医疗代理人委托书，以便在需要时有一个适当的计划。

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.

监护人应该用对被监护人限制最小的方式照顾被监护人，并且监护人应该考虑到被监护人的想法和需求。一般来说，监护权应该为被监护人提供最大的自由，同时仍然满足他们的需求。然而，在特殊的情况下，比方说一个紧急状况，法官可以扩大权限以便被监护人被很好地照顾到。

Individuals involved in the process

监护权申请过程中涉及的人员

- **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. 无行为能力人又称被监护人，即处于监护中的个人。在确定丧失行为能力之前，又可以被称作是疑似无行为能力人。
- **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. 监护人 - 监护人是由法院选出的照顾被监护人的个人需求和/或财产和财务的人。他们具体的职责会由法院决定，其职责可能非常具体也可能非常宽泛，这取决于法院决定的对被监护人最好的方式。
- **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. 法院书记员、监护人办公室 - 书记员和区县的监护人办公室可以回答您关于法院程序规则和申请事务的问题。他们也可以帮助您获得所有有关于您案件的文件。
- **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.

法院评估员 – 法院将指定一名法院评估员对疑似无行为能力人进行初步调查和访谈，以评估他们的情况，防止他们或其财产受到损害，并根据疑似无行为能力人的需要和能力向法院提出建议。这些调查结果将极大帮助法官在初次听证会上做出决定。

- **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.

法院审查员 – 法院审查员的职责是审查监护人有关疑似无行为能力人健康状况的报告，并检查监护人对疑似无行为能力人的资产和财务的会计核算。应向监护人提供法院审查员的联系方式。

Who can file a petition for a guardianship?

谁可以提交申请成为监护人？

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.

根据第 81 条，几乎任何个人或者组织都可以提交申请开始监护程序，即便他们没想要成为疑似无行为能力人的监护人。这意味着疑似无行为能力人，他们的护理机构或者任何与他们的福利相关的其他人都可以开始监护人程序。另外，这个程序也许看起来很复杂，但您不需要成为一个律师或者为了申请监护权而去雇一名律师，任何人都可以申请。

Who is qualified to be a guardian? 谁有资格成为一名监护人？

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.

根据第 81 条，疑似无行为能力人可以指定有能力的个人作为其监护人。此外，有几类有资格成为监护人的人。监护人可以是任何 18 岁以上的个人，或任何 18 岁以下的父母。监护人的资格非常广泛，以便配偶、成年子女、亲戚、邻居和护理组织等个人可以

接受照顾无行为能力人所需的步骤。也就是说，法院将调查拟议的监护人，法官对监护人是否适合该角色拥有最终决定权。

Process and Application 过程和申请

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.

开始程序之前，您需要和相对应的法院提交监护人申请。您可以查阅以下部分，帮助您找到合适的法院提交申请。法律规定了请愿书中必须有哪些具体内容，所以最好使用法院表格，以便您提供所有必需的信息。作为请愿书内容的指导，有必要知道《纽约精神卫生法》第 81.02 (a) 条规定，如果法院确定有必要为该人指定一名监护人，以满足该人的需要，包括食物、衣服、住所、医疗保健或安全，和/或管理该人的财产和财务事务，并且该人没有行为能力或同意任命，那么法院可以为该人指定一名监护人。“无行为能力”是指因为该人无法满足个人需要并且/或财产管理，该人无法充分理解和认识这种无行为能力的性质和后果，因此有可能受到伤害（《纽约精神卫生法》第 81.02 (b) 条）。提交申请需要支付费用，但如果您没有能力支付该费用则可以被豁免费用，这样您就不必再支付了。为了获得费用豁免，您需要提交《民事诉讼法和规则》第 1101 条规定的“穷人救济”动议 - 您可以从法院获取此表格并将其与您的请愿书一起提交。

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.

除了请愿书和法院要求的任何其他表格外，您还需要：(1) 让其他相关方了解诉讼程序，例如疑似无行为能力人的家庭成员；(2) 填写“说明原因的命令”，该命令要求疑似无行为能力人说明不应指定监护人的原因，以及“司法干预请求”，以要求为您的案件

指派一名法官；并且(3) 在该过程结束时，获得“指定监护人命令”，该命令指定某人作为监护人并授予他们与该角色相关的权力。

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.

在提交适当的文件以启动程序后，一名指定的法院评估员将会与疑似无行为能力人进行面谈，以便更好地了解他们的状况和能力。法庭评估员将就其调查结果提出一份报告，法官将在初次听证会上依据该报告来决定是否指定监护人。一般来说，如果监护权没有争议，那么听证会会非常简单直接，但如果有任何复杂的情况，那么听证会可能会更加实质性。如果疑似无行为能力人反对监护人的任命，那么您可能希望在可能的情况下聘请律师，因为听证会可能会变成由陪审团进行的全面审判，而您自己很难驾驭。

Where do you file? 您应该向哪里提交申请？

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 条监护权申请应向疑似无行为能力人所在的司法辖区的纽约最高法院或疑似无行为能力人居住或实际出现的县的县法院提出。如果您无法确定疑似无行为能力人的居住地，则适用其全部或大部分财产所在的县。此外，如果事先有任何命令，例如任命临时监护人，那么法院应处理有关疑似无行为能力人监护权的任何额外诉讼。截至 2021 年 2 月，纽约法院网站提供了以下包含法院位置以及联系方式的表格：

County Clerks & Guardianship Offices in Metropolitan Area Courts
大都会区域法院的县书记员和监护权办公室

Brooklyn 布鲁克林	<i>Kings County Supreme Court 国王县高级法院</i> 360 Adams Street, Brooklyn, NY 11201 360 Adams Street, 布鲁克林, 纽约邮编 11201 <i>County Clerk's Office</i> (347) 404-9818, Room: 122B 县书记员办公室, 122B 室, 电话 (347) 404-9818 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、保证金、获得监护委托书、认证副本并提交报告 <i>Guardianship Office</i>, (347) 296-1757, Room 285 监护办公室, 285 室, 电话 (347) 296-1757 To have your bond reviewed and approved, to obtain copies of forms and for general information 审查和批准您的保证金、获取表格和信息
Bronx 布朗克斯郡	<i>Bronx County Supreme Court 布朗克斯郡高级法院</i> 851 Grand Concourse, Bronx, NY 10451 851 Grand Concourse, 布朗克斯, 纽约邮编 10451 <i>Guardianship Department</i> (718) 618-1330, Room 6M-11 监护部门, 6M-11 室, 电话 (718) 618-1330 To get forms, ask questions and file reports 获取表格、提问和提交报告 <i>County Clerk's Office</i>, Room 118 县书记员办公室, 118 室 For bond approval and filing, to file your Oath and Designation and to get your Guardianship Commission and have it certified 保证金批准和提交、提交誓言和任命、获取监护委托和经认证的委托书副本
Manhattan 曼哈顿	<i>New York County Supreme Court 纽约县高级法院</i> 60 Centre Street, New York, NY 10007 60 Centre Street, 纽约, 纽约邮编 10007 <i>Guardianship and Fiduciary Support Office</i> (646) 386-3328, Rm. 158 监护和信托支援办公室, 158 室, 电话 (646) 386-3328

	To get copies of forms, file reports, and general information 获取表格、提交报告和获取信息 County Clerk's Office (646) 386-5936, Room 141B 县书记员办公室, 141B 室, 电话 (646) 386-5936 To file the Oath and Designation and the bond, get your Guardianship Commission, and obtain certified copies of it. 提交宣誓和任命书、保证金、获得您的监护委托书并获得一份认证过的委托书副本
Staten Island 史丹顿岛	Richmond County Supreme Court 里奇蒙郡高级法院 Guardianship Department, 25 Hyatt Street 监护部门, 凯悦街 25 号 Staten Island, NY 10301 史丹顿岛, 纽约邮编 10301 Guardianship Office (718) 675-8586, 4th floor 监护办公室 · 四层, 电话 (718) 675-8586 To get forms, ask questions, get your Guardianship Commission, and obtain certified copies of the Commission 获得表格, 提问, 获得监护人委托, 获得认证过的委托书 County Clerk's Office (718) 390-5389 县书记员办公室, 电话 (718) 390-5389 130 Stuyvesant Place, Room 101, Staten Island 斯泰弗森特广场 130 号, 101 室, 史丹顿岛 Use this office to file Oath and Designation and all reports 使用该办公室提交宣誓和任命书以及所有的报告
Queens 皇后区	Queens County Supreme Court 皇后县高级法院 88-11 Sutphin Boulevard, Jamaica, NY 11435 苏特芬林荫路 88-11, 牙买加区, 纽约邮编 11435 Guardianship Office, (718) 298-1040, Room 100 监护办公室, 100 室, 电话 (718) 298-1040 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 领取表格，提交宣誓和任命书以及保证金，获取监护委托和经认证的委托书副本，提交报告并提出问题
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What does a guardian need to do? 监护人需要做什么？

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: 监护人的职责和权力是具体情况具体讨论的。监护人对被监护人赋有法律上的义务，这些义务包括：

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. 在代表无行为能力人处理他个人和经济上的需求时，表达关心、照顾、勤奋、信任和忠诚。
2. File an initial and annual reports for the alleged incapacitated person's finances and personal needs. 针对声称无行为能力人的经济和个人需求，提交最初的和年度的报告。
3. Visit the incapacitated person not less than four times a year. 探访无行为能力人每年不少于四次。
4. Preserve, protect, and account for the alleged incapacitated person's property and financial resources. 保存、保护、并对声称无行为能力人的财产和经济来源负责。
5. Make sure the incapacitated person receives proper medical care/treatment according to their respective needs. 确保无行为能力人根据他们各自的需求得到合适的医疗保证和治疗。

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](#). 监护人还需要完成一个总管批准的监护培训项目。监护人援助网络提供的一个范例，您可以在[此处](#)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 seniorlaw@volsprobono.org. 本指南仅提供法律信息，不包含法律建议，也不是法律代理的要约。这个指南是由法律援助志愿者组织的退伍军人倡议项目在 2021 年 4 月准

备的。如果您对这份指南中的信息有疑问，[请拨打 347-521-5704](tel:347-521-5704) 或者发邮件至 seniorlaw@volspobono.org 联系我们。

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