

New York Guardianship FAQs

Individuals and families often turn to **RK Law PC** when a loved one loses the ability to manage personal or financial affairs. Below are common **New York Guardianship FAQs** so you can move forward with confidence.

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1. What Is Guardianship Under The New York Mental Hygiene Law (Mhl) Article 81?

Under **MHL § 81.02**, a court may appoint a guardian to make personal and/or property decisions for an adult who, due to incapacity, cannot adequately understand and appreciate the nature and consequences of such decisions. [Article 81 guardianships](#) are **tailored to the individual's functional limitations**, meaning the court may grant only those powers necessary to meet proved needs.

2. Who Can File A Guardianship Petition In New York?

In Brooklyn, Queens, Staten Island, the Bronx, Nassau or New York City, a petition may be filed by the alleged incapacitated person (AIP) themselves, a family member, a health-care facility, a social services official, or “anyone concerned with the welfare of the person,” including a friend or neighbor (**MHL § 81.06**). [RK Law PC can advise on standing and strategic considerations before filing.](#)

3. What Is The Difference Between A Guardian Of The Person And A Guardian Of The Property?

- **Guardian of the person:** makes personal and health-care decisions, chooses residence, and consents to medical or psychiatric treatment.
 - **Guardian of the property:** manages finances, pays bills, applies for benefits, and protects assets.
- A single individual (or co-guardians) can hold both roles or the powers can be divided, depending on the AIP's needs (**MHL § 81.21, § 81.22**).

4. What Legal Standard Must Be Met To Appoint A Guardian?

The petitioner must prove by **clear and convincing evidence** that (1) the AIP is likely to suffer harm because they cannot manage personal or property needs, and (2) no less-restrictive alternative (such as a valid power of attorney) adequately addresses those needs (**MHL § 81.12**). Testimony about functional limitations and a [court-appointed evaluator's](#) report are key evidence.

5. How Much Does An Article 81 Guardianship Proceeding Cost?

Costs include:

- **Filing fee**
- **Examiner fee** (varies by county and by size of guardianship)
- **Court evaluator fee** (set by the judge, based upon hours worked and complexity)
- **Court Appointed Counsel to the AIP Fee** (set by the judge, based upon hours worked and complexity)
- **Petitioner's Legal fees** (Guardianship expenses may be paid from the AIP's resources if the petition succeeds (per **MHL § 81.16**)).

6. How Long Does The Process Take?

From filing to hearing, **4–8 weeks** is typical in New York City courts, but complex cases can extend several months, especially if contested or if additional capacity evaluations are required.

7. What Are A Guardian's Duties After Appointment?

Guardians must:

- **Qualify** (post bond if ordered, sign oath & designation)
- **File an initial report** within 90 days (inventory of assets and care plan) (**MHL § 81.30**)
- **File annual accountings** with receipts (**MHL § 81.31**)
- Act in the AIP's **best interests** and avoid self-dealing
- Seek **court approval** for major decisions (e.g., selling real property)
Failure to comply may result in removal or surcharge.

8. Can A Guardianship Be Modified Or Terminated?

Yes. Under **MHL § 81.36**, any interested person or the guardian may petition to modify powers or terminate the guardianship if the AIP's condition changes, the powers prove excessive, or the guardian resigns.

9. How Can I Oppose A Guardianship Petition?

Opposition strategies include:

- Arguing **lack of jurisdiction or standing**
- Demonstrating less-restrictive alternatives (valid advance directives)
- Challenging the medical/functional evidence of incapacity
- Presenting the AIP's **express wishes** and testimony RK Law PC regularly represents respondents and aggressively protects autonomy rights.

10. What Happens At The Article 81 Guardianship Hearing?

The judge hears witness testimony, reviews the evaluator's report, and may personally interview the AIP. The proceeding is civil but follows formal rules of

evidence. At its conclusion, the court issues an **Order and Judgment** specifying the guardian's powers and duration.

11. Is Guardianship The Same As A Power Of Attorney Or Health Care Proxy?

No. **Advance directives** are private documents that grant authority without court involvement. Guardianship is a **public, court-supervised** remedy imposed when existing documents are absent, invalid, or inadequate. Courts favor advance planning as the less-restrictive option.

12. Why Choose Rk Law Pc For Your New York Guardianship Matter?

- **Focused Practice** – Decades of experience in guardianship, elder law, and estate litigation.
- **Courtroom Strength** – Proven record advocating in New York's Supreme and Surrogate's Courts.
- **Compassionate Counsel** – We prioritize dignity, autonomy, and family harmony.
- **Transparent Fees** – Clear retainers and phased billing options.