

## The Challenges of Caring for a Special Needs Adult After Turning 18

In our last newsletter we discussed ways to seek evaluation and assistance for your special needs child, but what happens when your child reaches 18? The following is from my presentation to the National Academy of Elder Law Attorneys on May 14, 2014, titled "Special Needs: A Lifelong Challenge" which you can access in full by [clicking here](#).

### Guardianship

In Virginia, a person taking care of an adult disabled has two names for two separate duties: (1) a guardian (appointed by the court) is responsible for the disabled person and (2) a conservator (also court-appointed) is responsible for the person's finances. Other states do not make this difference in names.

The law presumes that individuals over 18 are competent. Depending on your state, as soon as the disabled person turns 18, caregivers can no longer make medical decisions or have access to medical information. This can only be overcome through a guardianship proceeding. However, certain states like Maryland have a more informal approach with the surrogate system where guardianship proceeding is only necessary in complex situations and where control of finances is necessary.

Guardianship generally starts when the petitioner requests that the court finds the person with a disability incompetent. Often the petition needs to include one or two doctor evaluations. The Court will appoint a representative, known as a Guardian Ad Litem, to represent the disabled person during the proceeding.

To successfully overcome the presumption of competence, the petition must include sufficient evidence that the disabled person is unable to make or communicate responsible decisions for their health care, food, clothing, or shelter.

### The Disabled Person's Rights

The person with disability has all the rights afforded to a defendant during their hearing: an attorney, jury trial, presentation of evidence, and witness questioning. These rights are a safeguard against possible exploitation.

If the judge believes a guardian is warranted, an order is issued describing the guardian's exact responsibilities and powers.

Do you have questions about protecting a special needs child or adult? For assistance with the maze of legalities involved, please contact our office. We are here to help you.

Sincerely,  
**Yahne**



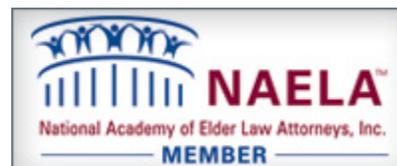
For more estate planning, special needs, and elder care information:

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A special thank you to those who attended my Trust Funding Seminars in March and April. It was a pleasure seeing everyone! More workshops to come.



I was privileged to present the topic "Special Needs - A Lifetime Challenge" at this year's Basic Workshop at the National Academy of Elder Law Attorneys Annual Conference in May.

I was just installed as the new President of the Virginia Chapter of the National Academy of Elder Law Attorneys on June 23rd. I am looking forward to serving!

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