

Guardianship and Healthcare Proxy

Accidents, illness or old age can impair an adult's capacity to deal with important matters. Spouses and registered partners can only represent each other in healthcare matters under certain conditions and for no longer than six months. Children and other relatives have no statutory right of representation at all. German law has made a range of provisions to ensure that your interests are safeguarded and your affairs are taken care of should your health become seriously impaired.

Publisher:
Ministry of Justice Baden-Württemberg
Schillerplatz 4, 70173 Stuttgart
Phone 0711 279-0
Fax 0711 279-2264
E-Mail: poststelle@jum.bwl.de

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Legal guardianship

If an adult becomes partly or entirely incapable of managing their affairs due to illness or disability, the court may appoint a guardian (Betreuer). The court will preferably appoint a voluntary guardian. If such a guardian is not available, the court will appoint a professional guardian. The guardian can act on behalf of the person concerned in precisely defined areas, known as “areas of responsibility”. Such areas of responsibility may include housing, financial or healthcare matters. The wishes of the person concerned must be taken into account insofar as this is not associated with a significant risk and is reasonable for the guardian. The court will appoint a guardian only if it is deemed necessary. This applies to various scenarios. For example, a guardianship is not necessary if there is a spouse who is entitled to represent the person concerned or if the person concerned has appointed an agent. The latter can be done in the form of a healthcare proxy. If a guardianship is deemed necessary, the court will appoint a guardian only for those areas of responsibility in which the person concerned is incapable of managing their affairs themselves. Lastly, a guardian may be appointed only for as long as the person concerned requires such assistance.

COURT PROCEEDINGS

The guardianship court (Betreuungsgericht) is responsible for appointing a guardian. The person concerned can submit an application to appoint a guardian. Third parties, such as family members, neighbours or friends, can also put forward a proposal to appoint a guardian. The court subsequently checks whether a guardianship is necessary. If the court establishes that a guardian is required, it will issue an order, stating the areas of responsibility relevant to the guardianship and the guardian’s name.

Healthcare proxy

The healthcare proxy (Vollsorgevollmacht) is an instrument that enables you to appoint a person you trust to act on your behalf if you are no longer capable of managing particular affairs. Such affairs may include dealing with bank or insurance transactions or signing a contract with a nursing home. If you have not appointed a healthcare proxy and become (partly) incapable of managing your affairs, guardianship proceedings (Betreuungsverfahren) are usually instituted. In many cases, appointing a healthcare proxy can make the appointment of a guardian unnecessary.

For more detailed information, please visit the website of the Baden-Württemberg Ministry of Justice (www.betreuungsrecht-bw.de).

You can register a healthcare proxy with the German Federal Chamber of Notaries (Bundesnotarkammer) for a small fee. This guarantees that the healthcare proxy will be taken into account at a later point. Please find more detailed information on the website of the Central Register of Lasting Powers of Attorney (Zentrales Vorsorgeregister) (www.vorsorgeregister.de).

Spousal representation

Spouses and registered partners can represent each other in healthcare matters. But this only applies if one of the spouses is incapable of managing their affairs due to unconsciousness or illness. And it does not apply if the spouses live apart or a guardian has already been appointed. It also does not apply if it is known that the spouse does not wish to be represented or has appointed an agent. In addition, the right of representation is limited to six months. Appointing a healthcare proxy is therefore also advisable if you wish to be represented by your spouse.

Advance directives

An advance directive (Patientenverfügung) allows you to determine in advance whether and what medical treatment you would like to receive should you become incapable of making an autonomous decision due to illness, accident or old age. An advance directive enables you to specify whether or not you give your consent to procedures to prolong your life in particular circumstances. An advance directive must be drawn up in writing and signed by hand. It is important that there is a clear distinction between a healthcare proxy and an advance directive. Whereas a healthcare proxy specifies who is allowed to represent you legally should your health become seriously impaired, an advance directive solely concerns the medical treatment you wish to receive should you become incapable of expressing this wish.

Further information on advance directives is provided in the German-language brochure “Patientenverfügung”, which is available on the website of the Baden-Württemberg Ministry of Justice and on the website of the Federal Ministry of Justice.

Further information

Guardianship associations (Betreuungsvereine) and guardianship authorities (Betreuungsbehörden) in Baden-Württemberg can provide further information on guardianship legislation and support for voluntary guardians and agents. For a list of guardianship associations and guardianship authorities, please visit the website of the Baden-Württemberg Ministry of Justice at www.betreuungsrecht-bw.de.