

99046071061000

Set up legal support

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Modul	Sachverhalt
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Leistungsbezeichnung I	Set up legal support
Leistungsbezeichnung II	Set up legal support
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Begriffe im Kontext	
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Lagen Portalverbund	
Einheitlicher Ansprechpartner	
Fachlich freigegeben am	

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Fachlich freigegeben durch

Handlungsgrundlage

- §§ 1814 bis 1881 Bürgerliches Gesetzbuch (BGB)
- §§ 271 ff. Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) – Verfahren in Betreuungssachen
- § 307 FamFG – Kosten in Betreuungssachen
- § 277 FamFG – Vergütung und Aufwendungsersatz des Verfahrenspflegers
- Gesetz über Kosten der freiwilligen Gerichtsbarkeit für Gerichte und Notare (Gerichts- und Notarkostengesetz – GNotKG), Anlage 1 (zu § 3 Abs. 2) Kostenverzeichnis, Nr. 11100 - Verfahren vor dem Betreuungsgericht - und Nr. 31000 ff. - Auslagen der Gerichte

Teaser

If a person is permanently unable to manage their own affairs due to illness or disability, they need a legal guardian to act on their behalf and represent them. This can be a close person (spouse, child, friend), but also a volunteer or a professional carer.

Volltext

Appointment of a legal guardian in accordance with §§ 1814 ff. German Civil Code (BGB)

If a person is permanently unable to manage their own affairs due to illness or disability, they need a legal guardian to act on their behalf and represent them. This can be a close person (spouse, child, friend), but also a volunteer or a professional carer.

If the person concerned has not decided who should provide them with legal care in an emergency, the guardianship court must appoint a guardian.

If you would like to look after your relative yourself without the need for a court guardianship procedure, your relative should grant you a so-called power of attorney in good time (i.e. when they are legally competent). If the person concerned is not in a position to apply for legal guardianship themselves, any third party can apply to the court to have one set up (relatives, social services, doctors).

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The guardianship court decides on the type and scope of the guardianship. It appoints and dismisses the carer. The court bases its decision on its own direct impression (judicial hearing), on a medical report and on a social report from the local care authority (central contact point for all matters relating to legal care at the district office, in cities with district status at the city administration).

Erforderliche Unterlagen

Initiation of the procedure

As far as possible, the person concerned submits an application for the appointment of a legal guardian to the competent court. In other cases, the guardianship court decides ex officio without an application. Third parties (such as family members or neighbours) can apply to the local court for legal guardianship either informally or using the form provided.

Rights of the person concerned safeguarded in the proceedings

The person being cared for is in any case entitled to participate in the proceedings, i.e. they can submit applications themselves and appeal against court decisions. The guardianship court therefore has a duty to inform the person being cared for about the possible course of the proceedings and to notify them of all court decisions in this regard.

Trusted person as guardian ad litem

In the event that the person concerned is not in a position to look after their own interests during the proceedings, the guardianship court appoints a so-called guardian ad litem. This can be a person of trust from the family, friends or acquaintances, employees of care organisations, social workers or lawyers.

The authorised persons should support the person concerned in the proceedings, for example by explaining the individual procedural steps, communicating the content of the court's notifications and explaining the importance of the matter.

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The guardian ad litem must also inform the court of the wishes of the person concerned.

Judicial hearing and expert opinion

Apart from a few exceptions, the guardianship court must hear the person being cared for in person before making certain decisions and gain a direct impression of them. The hearing is mandatory in all cases, for example when it comes to appointing a carer for the first time, assigning more tasks to the carer or dismissing the carer against the wishes of the person concerned.

This provision is intended to ensure that the court is sufficiently informed about the personality of the person to be cared for.

Hearing

The guardianship court should gain a direct impression of the person concerned in their usual environment if they request it or if it serves to clarify the matter. However, the person concerned should not be disturbed in their private sphere against their will. A visit by the judge is therefore not mandatory. Alternatively, the hearing can take place on the official premises.

The guardian ad litem must be present at the hearing (if appointed). The guardianship court may call in an expert at this stage. At the request of the person being cared for, a trusted person may be present at the appointments. The court may authorise other persons to be present, but not against the wishes of the person requiring care.

The outcome of the hearings, the expert report or the medical certificate, who is to take over the care and what this means, will be discussed with the person to be cared for.

Involvement of third parties

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The guardianship authority (the district administration office or the city administration in cities not belonging to a district) must be consulted before a guardian is appointed. The hearing should take place before an expert opinion is obtained and should relate, among other things, to the personal, health and social situation of the person concerned and the need for care. As a rule, spouses, parents, foster parents and children should also be given the opportunity to comment - unless the person concerned objects to the hearing or it is feared that their interests will be impaired as a result.

Decision

Once the necessary hearings and investigations have been completed, the competent guardianship court makes a decision on future guardianship. If all requirements are met, the court appoints the legal guardian. At the same time, it sets the date when a decision is to be made on the cancellation or extension of the guardian's appointment.

The decision is announced to the person concerned, the carers, the guardian ad litem and the care authority. As a rule, the decision becomes effective upon notification to the carer.

Verbal commitment and identification

The guardian is verbally appointed by the guardianship court and receives a certificate of appointment. The document also identifies the carer as such (in conjunction with the identity card).

The document also specifies the areas of responsibility. At the end of the guardianship, the document is returned to the guardianship court.

Note: The original document should not be sent to third parties; photocopies or notarised copies are usually sufficient.

Voraussetzungen

The person concerned is unable to manage all or part of their own affairs due to illness or disability.

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Kosten

The amount of the fee depends on the assets of the person receiving care:

- currently EUR 10.00 per year for every EUR 5,000 or part thereof of the assets exceeding the allowance of EUR 25,000
- The minimum fee is currently EUR 200.00 per year. If the scope of the guardian's duties does not include the care of assets, for example if the scope is limited to the right of residence, the fee is also determined by the assets of the person being cared for, but amounts to a maximum of EUR 300.00.

Please note: Court fees are only charged if the assets of the person under guardianship exceed EUR 25,000 after deducting certain liabilities.

If the care is not provided on a voluntary basis, but by a professional carer, the latter is entitled to remuneration in accordance with the provisions of the Act on the Remuneration of Guardians and Carers (VBVG). Voluntary carers, on the other hand, can only claim reimbursement of their expenses. If the person being cared for is destitute, the carers receive the corresponding payments from the state treasury, otherwise from the person being cared for themselves.

Verfahrensablauf

Temporary injunction

The procedure described above requires extensive investigations by the guardianship court and takes a certain amount of time. However, it is often necessary to act quickly. In this case, the court can appoint a temporary carer, dismiss a carer or extend the carer's remit in a simplified procedure by means of an interim order.

Such an urgent measure is only permitted under certain conditions. A temporary order may not last longer than one year.

In particularly urgent cases (example: placement of the person concerned), the guardianship court itself can take the necessary measures as long as no guardian has been appointed and is unable to fulfil their duties.

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Legal remedies

Decisions of the guardianship court can be appealed against.

The regional court decides on the appeal. An appeal may be lodged with the Federal Court of Justice against the decision of the Regional Court.

Bearbeitungsdauer

Frist

- Cancellation or extension of the appointment of a guardian: generally after seven years at the latest.
- If guardianship is ordered against the declared will of the person concerned, the first decision on its cancellation must be made no later than two years after it was ordered.
- Appeal against the decision of the guardianship court: within one month

weiterführende Informationen

Hinweise

Requesting legal guardianship for the person concerned

If the person concerned is not in a position to apply for legal guardianship themselves, any third party can apply to the court for such guardianship to be set up (relatives, social services, doctors). The guardianship court decides on the type and scope of the guardianship. It appoints and dismisses the carer.

The court bases its decision on its own direct impression (judicial hearing), on a medical report and on a social report from the local care authority (central contact point for all matters relating to legal care at the district office, in cities with district status at the city administration).

The guardianship must not last longer than necessary. After seven years at the latest, the court must decide on the cancellation or extension of the appointment of a guardian. If the guardian is appointed against the wishes of the person concerned, the first decision on its cancellation or extension must be made no later

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	<p>than two years after it was ordered.</p> <p>Note: If a quick decision is necessary, this is possible by way of a temporary injunction.</p>
Rechtsbehelf	Decisions of the guardianship court can be contested by means of an appeal.
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	