# Adult Guardianship System

## For People Considering Adult Guardianship



CONTENTS


1 Using the Adult Guardianship System ····· P1
2 Tasks Required of an Adult Guardian, etc. ····· P3
3 About the Adult Guardianship System ····· P5
4 Flow of Process ····· P7
5 About Petition ····· P9
6 Appointment of the Adult Guardian, etc. ····· P10
7 For Properly Conducting Clerical Work as a Guardian, etc. · P11
8 Clerical Work as Guardian, etc. and Reporting ····· P13
9 Termination of Guardianship, etc. ····· P14


Family Court

# 1 Using the Adult Guardianship System

## Before using the adult guardianship system

1



I wasn't good at calculating or managing money, so I was having my mother take care of money business when buying expensive stuff or going through administrative or bank procedures.
One day, my mother became sick and bedridden.

2



Recently, I often buy things that I already had in the house, forgetting that I had them. I can't decide for myself whether I should go to an elderly's home instead of living on my own.

3



I got a call from a pernicious dealer and was almost tricked.
I'm getting more forgetful lately, so I'm worried that I might be tricked in the future.

4

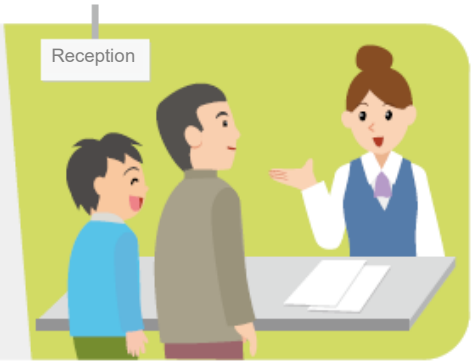


I'm concerned about who would support me if I become demented in the future.

# To continue living at ease, let's think about using the adult guardianship system

## If you use the adult guardianship system

My guardian did the banking for me. I feel reassured, because my guardian will support my life from now on.




My guardian listened to my problems. I will be continuing to live in my own house while receiving support.



Even if I am tricked into making a contract, my guardian will cancel that contract.



My son became my voluntary guardian. I feel reassured that my son will be supporting me.



* "Guardian" here includes assistant, curator, and adult guardian in meaning.

▶Please read "About the Adult Guardianship System" on pages 5 and 6 for details.

# 2 Tasks Required of an Adult Guardian, etc.

## 1 Plan what you will be doing as an adult guardian, etc.

First, check how the ward is living and what assets he or she has, in order to think about the ward's living situation and how he or she should use the money.



## 2 Listen to the ward's preferences and follow the necessary procedures.

Considering the ward's feelings and how he or she is living, select necessary welfare services and follow the necessary steps so that the ward is able to receive his or her pension.



# An adult guardian, etc. performs the following tasks.

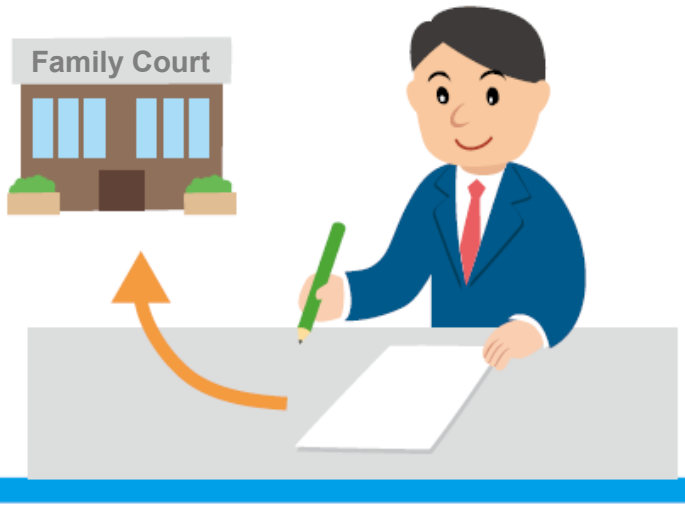
## 3 Protect the ward from money-related problems.

If the ward gets in trouble such as being tricked by a pernicious business into buying something unnecessary, the guardian, etc. can cancel that contract.



## 4 Report how the ward is living to the family court.

The guardian, etc. reports the ward's health conditions, how he or she is living, and how much money and what assets the ward has to the family court.



# 3 About the Adult Guardianship System

## What is an adult guardianship system



An adult guardianship system is a system that legally supports individuals (“ward”) whose capacity for judgment is limited due to dementia, impaired intelligence, and/or mental disorder by selecting a supporter (“adult guardian,” etc.) to protect the ward’s rights.

**Q** What kind of adult guardianship systems are available?

**A** There is a voluntary guardianship and a legal guardianship.

- **Before the capacity for judgment becomes insufficient:** ▶ 1 To “Voluntary Guardianship”
- **After the capacity for judgment has become insufficient:** ▶ 2 To “Legal Guardianship”

## 1 Voluntary Guardianship

A voluntary guardianship is a system in which an individual seeking a guardian appoints, while the individual still has sufficient capacity for judgment, another person (“voluntary guardian”) to perform certain tasks by contract (“voluntary guardianship contract”) when his or her capacity for judgment deteriorates.
A voluntary guardianship contract should be concluded by a notarized deed created by a notary, so please inquire with your local notary public office about the procedure and costs.
When the individual’s capacity for judgment deteriorates, the voluntary guardianship contract does not take effect until a supervisor for the voluntary guardian has been appointed by the family court. The persons who may petition for the appointment of a supervisor of a voluntary guardian are the individual seeking guardianship, the individual’s spouse or relatives within the fourth degree of kinship, or a voluntary guardian appointee (a person who will become a voluntary guardian).

*In cases where the court issues a ruling for the appointment of a supervisor of a voluntary guardian pursuant to a petition filed by any person other than the person themselves, the person’s consent is required. If the person is unable to express consent, however, then consent is not required.

**Voluntary guardianship contract concluded**



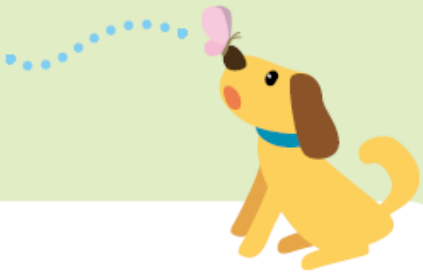
**Capacity for judgment deteriorates**

**Petition for appointment of a supervisor for the voluntary guardian filed with the family court**

**Supervisor for the voluntary guardian appointed**

**Voluntary guardianship contract takes effect**





## 2 Legal Guardianship

A legal guardianship is a system where an adult guardian, etc. is selected by the family court when the relevant individual undergoes deterioration of capacity for judgment to an insufficient level. Depending on the level of the capacity for judgment, three guardianships are available: assistance, curatorship, and guardianship.

### Three legal guardianships

| | Assistance | Curatorship | Guardianship |
|---|---|---|---|
| Eligible individual | Capacity for judgment is insufficient | Capacity for judgment is significantly insufficient | Capacity for judgment is lacking in normal state |
| Acts that an adult guardian, etc. can agree to or cancel (*1) | Acts determined by the court upon petition (*2) | Acts determined by the court upon petition in addition to the acts specified in Article 13 Paragraph 1 of the Civil Code, such as loans and acceptance of inheritance | In principle, all legal acts |
| Acts that an adult guardian, etc. can perform on the ward's behalf (*3) | Acts determined by the court upon petition | Acts determined by the court upon petition | In principle, all legal acts |

*1: Acts that the adult guardian, etc. can cancel do not include acts related to daily life (e.g. purchase of commodities).

*2: Limited to certain acts under Article 13 Paragraph 1 of the Civil Code (e.g. loans, acceptance and renunciation of inheritance, litigation, and building, remodeling, or expanding a house).

*3: Disposition of the ward's residential real estate requires the permission of the family court.

* The ward's consent is required for an adjudication of starting assistance, an adjudication of granting consent right and right of representation to the assistant, and an adjudication of granting right of representation to the curator.



# 4 Flow of Process

## Municipalities and private organizations

Before you decide on using the adult guardianship system, you can consult the Regional General Support Center or core institutions established in the municipality, Social Welfare Councils, and organizations of practitioners that deal with the adult guardianship system (e.g. bar associations, judicial scriveners' associations, certified social workers' association) about the procedures and necessary documents for using the adult guardianship system and how to find someone who would be your adult guardian, etc.

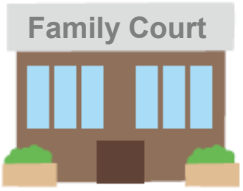


If you want explanation of processes at the court, please go to the process guide at the family court

## Family Court

### Process Guide

You can receive an explanation of the flow of the process for starting guardianship, etc. and the documents necessary for petition (An introductory DVD is also available for your viewing.).




**1 Petition**

- A petition form and other documents, along with petition fee and other costs, are required to file a petition.
- Some family courts may need a reservation by phone call to schedule a visiting date/time.

**2 Investigation, etc.**

- The court may inquire about the circumstances.
  * Competency examination may be given to verify the individual's capacity for judgment (Separate costs incurred.).

**3 Adjudication**

- An adult guardian, etc. is appointed at the same time when the start of guardianship, etc. is adjudicated.

**4 Reporting**

- Promptly after being appointed, the adult guardian, etc. checks the ward's estate and living situation, creates an inventory of assets and an income and expenditures schedule, and submits them to the family court.
- An adult guardian, etc. is required to report on the ward's life and situation of his or her estate at least once a year in principle.



## About Petition

Q1 Can I file a petition with any court?
Q2 Can anyone file a petition?
Q3 What documents are necessary for petition? What are the costs associated with the petition?
Q4 In what cases is a competency test necessary?
Q5 Can I withdraw my petition?

▶See page 9 for details



## Appointment of the Adult Guardian, etc.

Q1 What kind of person is appointed to be an adult guardian, etc.?
Q2 What does an adult guardian, etc. do first after appointment?

▶See page 10 for details

## For Properly Conducting Clerical Work as a Guardian, etc.

Q1 What kind of measures are available to support proper clerical work by the adult guardian, etc.?
Q2 How does the guardianship support trusts and guardianship support deposits and savings work, and what is the flow of that process?

▶See page 11 for details

## Clerical Work as Guardian, etc. and Reporting

Q1 After being appointed an adult guardian, etc., what should I be aware of?
Q2 How often is the adult guardian, etc.'s clerical work reported?
Q3 Is the adult guardian, etc. remunerated?
Q4 What should I do when there is an address change?

▶See page 13 for details



## Termination of Guardianship, etc.

Q1 When does the work of an adult guardian, etc. end?
Q2 What does an adult guardian, etc. do after his or her work is completed?

▶See page 14 for details

# 5 About Petition



## Q1 Can I file a petition with any court?

A

Please file a petition with the family court that has jurisdiction over the place of domicile of the individual seeking guardianship.
If you do not know which family court has jurisdiction, please ask your nearest family court.

## Q2 Can anyone file a petition?

A

People who can file a petition are the individual seeking guardianship, the individual's spouse, and the individual' relative within fourth degree kinship. Additionally, the mayor of the municipality may file the petition.
* The following people are the relatives within fourth degree kinship of the individual:
  - Parents, grandparents, children, grandchildren, and great-grandchildren
  - Siblings, nephews, and nieces
  - Uncles, aunts, and cousins
  - Parents, children, and siblings of spouse

## Q3 What documents are necessary for petition? What are the costs associated with the petition?

A

Common documents and expenses necessary for petition are as follows:

- Petition form
- Medical certificate (for adult guardianship)
  * The petition form and the form for medical certificate (for adult guardianship) are available at the family court and on the Court Web site (see back cover).
- Petition fee (Revenue stamps worth 800 yen per case)
  * If you are petitioning for adjudication for granting consent right and right of representation to an assistant or curator at the same time, you need revenue stamps worth 800 yen for each of these petitions.
- Registration commission fee (Revenue stamps worth 2,600 yen)
- Postal stamp
- Copy of family register of the individual seeking guardianship, etc.
- Competency test fee (if applicable), etc.

For more information, please check the list provided at the family court.

## Q4 In what cases is a competency test necessary?

A

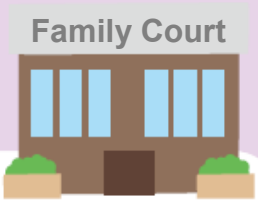
To carefully evaluate the degree of the individual's capacity for judgment, a competency test may be given to the individual by a doctor. In such a case, you will need a competency test fee. The amount of this fee depends on the individual case.
* The costs necessary for the petition process, including the competency test fee, will be paid by the petitioner in principle.
  If you are not in a financial position to pay, you may be able to use a municipal subsidy. Please inquire with the municipality office for details.

## Q5 Can I withdraw my petition?

A

Once you file a petition, you cannot withdraw it without the permission of the family court. For example, in principle, a petition cannot be withdrawn based on the reason that the candidate recommended by the petitioner is likely to not be appointed as the adult guardian, etc.

# 6 Appointment of the Adult Guardian, etc.




## Q1 What kind of person is appointed to be an adult guardian, etc.?

A

The family court appoints an adult guardian, etc. at the same time when it adjudicates the start of guardianship, etc.
In appointing an adult guardian, etc., the family court appoints an individual most suitable for the ward.
If certain problems, such as the ward's legal or living difficulties or the ward's property management being complex and difficult, are known at the time of petition, the family court may appoint a practitioner with specialized expertise about the duties and responsibilities of an adult guardian, etc., such as a lawyer, judicial scrivener, or certified social worker, to be the ward's adult guardian, etc.
Please note that you cannot file a complaint against the family court's decision of who is appointed to be the adult guardian, etc.

## Q2 What does an adult guardian, etc. do first after appointment?

A

An adult guardian, etc. promptly checks the ward's living situation and preferences for future living through interviews with the ward. The adult guardian, etc. also submits necessary notifications to banks and formulates a policy for clerical work as an adult guardian, etc. Then the adult guardian, etc. prepares an inventory of assets and an income and expenditures schedule for submission to the family court.

* When submitting necessary notifications to banks, you may be asked to submit a certificate of registered information. A certificate of registered information includes the details of the adjudication to start guardianship, etc. and can be acquired at the Legal Affairs Bureau.
* An inventory of assets is a document that lists all the assets the ward owns, including deposits and savings, as well as any real estate.
* An income and expenditures schedule is a document that lists the schedule of the ward's income and expenditures based on his or her living situation.



# 7 For Properly Conducting Clerical Work as a Guardian, etc.

## Q1 What kind of measures are available to support proper clerical work by the adult guardian, etc.?

### A

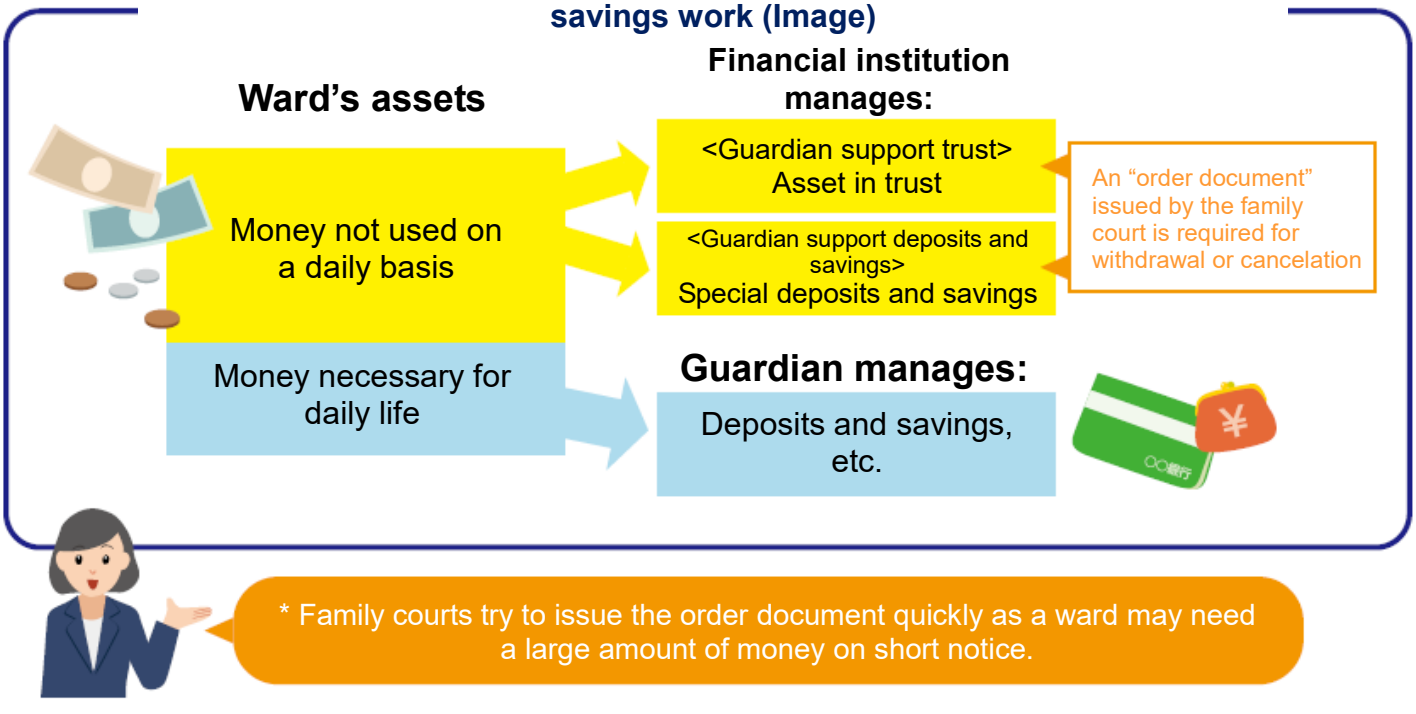
### ●Appointment of a supervisor for the guardian, etc.

When the planned guardianship tasks are complex and difficult, the family court may appoint a practitioner (e.g. lawyer, judicial scrivener, or certified social worker) as a supervisor for the guardian, etc. to support the clerical work of the adult guardian, etc.

### ●Using a guardianship support trust or guardianship support deposits and savings

As an option for the adult guardian to properly manage the ward's estate, the use of a guardian support trust or guardianship support deposits and savings may be considered.
When this system is used, out of all the ward's assets, the adult guardian manages an amount of money necessary and sufficient for the ward to make usual payments as deposits and savings and has a financial institution manage the money that is not used normally as asset in trust or special deposits and savings.
By using this system, the adult guardian can manage the money necessary for daily use while reducing the burden of asset management.

**How guardianship support trusts and guardianship support deposits and savings work (Image)**






* Family courts try to issue the order document quickly as a ward may need a large amount of money on short notice.



## Q2 How do the guardianship support trusts and guardianship support deposits and savings work, and what is the flow of that process?

A

**Adult guardian reports to family court** → Start use / Withdrawal → **Family court issues order document** → **Financial institution processes the request**

### ●Review on whether or not it is appropriate to use a guardianship support trust, etc.

The adult guardian reviews whether or not it is appropriate to use a guardianship support trust, etc. based on the ward's living situation and assets, and reports the result to the family court.

### ●Conclusion of trust agreement or deposit contract

If the family court decides that the use of a guardianship support trust, etc. is appropriate, it issues an order document to the adult guardian in order to conclude a trust agreement or a deposit contract. The adult guardian submits the order document to the financial institution to conclude the agreement or contract.

### ●Withdrawal of money from, or additional asset in trust or additional deposit to the financial institution

There may be a case where money needs to be withdrawn from the financial institution, or additional asset in trust or additional deposit needs to be made to the financial institution, after concluding the agreement or contract.
There are instances where order documents issued by the family court are required for the procedures.

* An adult guardianship support trust cannot be used with curatorship, assistance, or voluntary guardianship. Depending on the financial institution, guardianship support deposits and savings may be available for curatorship and assistance (but not voluntary guardianship). In addition, guardianship support deposits and savings may not be available in the case of a guardianship of a minor, depending on the financial institution.
* Please check with the financial institution that you are considering using.
* If a practitioner is involved as a guardian or supervisor for the guardian when using a guardian support trust, etc., remuneration specified by the family court may be necessary (Financial institution's management remuneration may also be incurred separately.).
  After concluding the trust agreement, if there is no more need for a practitioner to be involved, the practitioner will resign.

Some financial institutions handle deposits that require the supervisor for the guardian, etc. to be involved when depositing or withdrawing. Please inquire with your nearest family court for details.



# 8 Clerical Work as Guardian, etc. and Reporting



## Q1 After being appointed an adult guardian, etc., what should I be aware of?

A

The adult guardian, etc. must respect the intentions of the ward and take care of the ward so that he or she can enjoy a stable life.
The adult guardian, etc. also has an obligation to properly manage the ward's assets. Therefore, if the adult guardian, etc. is found to have improperly treated the ward's assets, not only is the guardian, etc. removed from this duty, but also may be held liable for damages under civil liability or be liable to criminal charges for misappropriation or other crime.

## Q2 How often is the guardian, etc.'s clerical work reported?

A

The family court requires that the adult guardian, etc. reports on the clerical work he or she is doing as an adult guardian, etc. and through this report, checks whether the adult guardian, etc. is properly conducting the tasks.
Currently, in general, an adult guardian, etc. is required to report on the situation of the guardian, etc.'s clerical work at a designated time once a year.

## Q3 Is the adult guardian, etc. remunerated?

A

If the adult guardian, etc. or the supervisor for the guardian, etc. files a petition with the family court for remuneration, he or she may receive remuneration specified by the family court out of the ward's assets (Remuneration cannot be received from the ward's assets without the permission of the family court.).

* Similarly, a supervisor for a voluntary guardian may also receive remuneration from the ward's assets based on a judgment by the family court upon filing a petition with the family court for remuneration.

## Q4 What should I do when there is an address change?

A

If the ward or the adult guardian, etc. changed his or her address, apply for a "registration of change" to the Legal Affairs Bureau (Please inquire with the nearest Legal Affairs Bureau for information on how to apply.).
Please also contact the family court in such a case.

**! The Court Web site (see back cover) provides a video that explains the duties and responsibilities of an adult guardian, etc. in an easy-to-understand manner.**



# 9 Termination of Guardianship, etc.



## Q1 When does the work of an adult guardian, etc. end?

A

The duties of an adult guardian, etc. continues until the ward recovers from an illness or recovers his or her capacity for judgment, or dies. Guardianship does not end just because the initial purpose that caused the petition for guardianship (for example, reception of insurance proceeds or division of estate) has been fulfilled. Resignation from an adult guardian, etc. requires permission from the family court.

## Q2 What does an adult guardian, etc. do after his or her work is completed?

A

### ●Contact and report to the family court

If the ward dies, the adult guardian, etc. notifies the family court to check on subsequent clerical work.

### ●Application to the Legal Affairs Bureau for registration

In addition to notifying the family court, the adult guardian, etc. must apply for a “registration of termination” to the Legal Affairs Bureau (Please inquire with the nearest Legal Affairs Bureau for information on how to apply.).



# Contacts for Inquiries Regarding the Adult Guardianship System

## Consultations regarding petition and the use of the adult guardianship system

### Regional General Support Center or Social Welfare Council of the municipality

* The consultation contacts for people with disabilities are the municipality and the designated consultation and support operator commissioned by the municipality.
* If a core institution is established in the municipality, that institution can also be used.

* For contact information about consultation, please inquire with the municipality.
* Some municipalities offer subsidies for the expenses necessary to use legal guardianship. Please inquire with the municipality for details.

## Inquiries about legal problems

### Japan Legal Support Center (“Hou Terrace”)

https://www.houterasu.or.jp/

遠テラス ナビダイヤル 0570-078374

* You can call at a rate of 8.5 yen (tax excluded) for 3 minutes from anywhere in Japan from a landline phone.
* From an IP phone, dial 03-6745-5600.

## About guardianship support trusts

### Leaflet of the Trust Companies Association of Japan

“Backing Up the Guardianship System: Guardianship Support Trusts”
https://www.shintaku-kyokai.or.jp/document/pamphlet.html

## About the application for adult guardianship registration

### Ministry of Justice website

https://www.moj.go.jp/

* Application form for certification or non-registration can be sent from your nearest Legal Affairs Bureau or Regional Legal Affairs Bureau, or can be downloaded from the Ministry of Justice website. Please inquire with your nearest Legal Affairs Bureau or Regional Legal Affairs Bureau for details.

## About the voluntary guardianship contract

### Japan National Notaries Association or notary public offices nationwide

https://www.koshonin.gr.jp/ TEL 03-3502-8050

## Guide for petition and process for the adult guardianship system

### Court Web Site (Guardianship Portal Site)

https://www.courts.go.jp/saiban/koukenp00/ 後見ポータルサイト Search

* The website introduces the nearest family courts and petition forms, etc. in addition to an explanation of the processes.

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