

Finland

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1. The Guardianship Services Act (442/1999) entered into force in December 1999. The purpose of the reform was to create legislation that enables the protection of persons according to their individual needs without unnecessary restrictions to self-determination. In 2007, the Guardianship Services Act was complemented by the Act on Continuing Powers of Attorney (648/2007). The purpose of this legislation was to enable persons to make prior arrangements in case of future incapacity and to choose a trusted person as their future attorney. In 2010, Finland ratified the Hague Convention on the International Protection of Adults (2000). Finland has also ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. The ratification entered in force in 2016. No reform to the Guardianship Services Act was deemed necessary due to the ratification process of the latter.

2. In addition to the statutory guardianship arrangements and confirmed powers of attorney, there are alternative ways of handling the affairs of for example, an aging person of deteriorating capacity. In practice, spouses have the possibility to continue to handle the affairs of the other spouse, if they share a common bank account. Written authorizations governed by the general Contracts Act (228/1929) for different transactions are sometimes used by near relatives even after the capacity to give new authorizations may already be questioned. Municipal social authorities also use brokering accounts where social benefits are paid and which are used for the benefit of the beneficiary and/or his/her family. In chapter 18, section 10 of the Code of Commerce, there is also a historical statutory provision on *negotiorum gestio*, which allows a relative or a friend to act on behalf of another in a situation where the circumstances (for example due to extreme urgency) do not allow official authorization. Under *negotiorum gestio*, the person who acts as a representative for another without due authorization, bears the responsibility of his actions in damages.

3. If informal measures are not considered sufficient to appropriately take care of the interests of the person, a continuing power or attorney, if such has been previously drafted, may be taken to the local registry office to be confirmed, or a guardian can be appointed. According to section 8 of the Guardianship Services Act, a court may appoint a guardian, if an adult, owing to illness, disturbed mental faculties, diminished health or another comparable reason, is incapable of looking after his or her interests or taking care of personal or financial affairs, which are in need of management and which cannot be taken care of appropriately in another manner. According to section 1 of the Act on Continuing Powers of Attorney, the Act is applied for continuing powers of attorney, which have been issued in case the donor becomes incapable of taking care of his or her affairs owing to illness, disturbed mental faculties, diminished health or another comparable reason.

The custodians of the minor (a person who is under 18 years) are also his or her guardians, unless otherwise is decreed in the statute or by the courts (s. 4). A guardian may be appointed for a minor, when the minor attains the age of 17 years. In this event, the tasks of the guardian begins when the minor attains the age of 18 years (s. 9).

A guardian is appointed by a local register office (*maistraatti*) or by a court. The local register office can appoint a guardian only if the person whose interests are to be looked after understands the significance of the matter and if he/she requests that a named person be appointed as the guardian (s. 12(2)). The local register office or the district court may also appoint a public guardian to act as the guardian. The public guardian is usually a public official employed by a public guardianship office. In some regions, a public guardian employed by a

provider of outsourced services may also act as a public guardian (Act on Districts for Legal Aid and Guardianship, 477/2016).

The continuing power of attorney comes into force only by confirmation of the local registry office, which is done when the donor is no longer capable of managing his or her affairs. The donee shall present to the local register office the original power of attorney and a medical certificate or the equivalent stating that the donor has become incapable of managing the affairs covered by the power of attorney. A donee under the continuing power of attorney is always a private person.

Normally, a guardian or a donee is appointed to take care of the property and financial affairs of the client. A guardian or a donee may also be appointed for the performance of an individual task, such as the sale of real estate on behalf of the client. Although a guardian or a donee may also be appointed for personal matters, legislation on health and social care include additional provisions on decision-making in the matters of health and social care. A guardian or a donee is not, however, competent to give consent to marriage or adoption on behalf of the client, not to acknowledge paternity, consent to an acknowledgement of paternity, make or revoke a will or represent the client in other matters of a comparable personal and individual nature (s. 29(3) of the Guardianship Services Act and s. 2(3) of the Act on Continuing Powers of Attorney).

One of the main principles in the Finnish guardianship legislation is that when an adult person is not capable of taking care of his or her affairs, the least encroaching measures are explored first. Appointing a guardian or confirming a continuing power of attorney does not in itself restrict the client's own competence to enter into transactions or administer a property. If the appointment of a guardian is not alone sufficient to safeguard his/her interests and his or her property, livelihood or other important interests are endangered, a court may restrict his/her competency by ordering that he/she is not competent to enter into given transactions or administer given property or has the competency to do that only in conjunction with the guardian. As a last measure, a person may be declared (completely) incompetent (Guardianship Services Act, s. 18).

A guardian taking care of the property of the client must keep books of the assets and liabilities of the client as well as of the events of the accounting period. In the beginning of the task, the guardian must supply the local registry office with a list of the assets and liabilities of the client. The guardian must submit regular, normally annual, accounts to the local registry office. The guardian must obtain the permission of the local registry office before entering into important transactions on the behalf of the client. A permission is needed e.g. for the selling or buying of real estate or a residence, the pledging of property as collateral for a debt, and for the taking out of some other loan than a state-guaranteed student loan. The guardian is not empowered to donate the property of the client. The local register office also supervises the actions of the donee of the continuing power of attorney. When the donee begins his task, he shall submit a list of assets and debts of the principal covered by the power of attorney to the local register office. At the request of the local register office, the donee shall later submit a report on how the financial affairs have been managed. The power of attorney can indicate the extent of supervision applied by local register office.

The court will terminate a guardianship upon petition, once there no longer is need for one. In order to ensure that no one is under guardianship without reason, the local registry office reviews all guardianships every four years and determines whether they should continue. The task of the guardian may also be terminated by court, if the guardian proves to be unsuitable for the task. The task of the donee may be terminated, if the power of attorney is withdrawn or a guardian is appointed for the same task. Both tasks are terminated as a matter of course, if the client dies.

4. The local registry offices maintain a nation-wide register of guardianships. According to the statistics, the number of valid guardianship arrangements and powers of attorney continues to increase every year. Whereas in 2014, the number of registered guardianship arrangements was almost 70.000 and the number of valid continuing powers of attorney was 2.400, the respective numbers were 74.300 and 8.000 in 2018. Whereas the number of partial orders of incompetence has maintained in the same level (631 in 2014, 679 in 2018), the number of declarations of (complete) incompetence has decreased from 911 in 2014 to 679 in 2018 despite the increased number of valid guardianship arrangements in total. The population of Finland is approximately 5,5 million.

5. The discussion on guardianship mostly focuses on the limited public resources available for guardianship in general or for the supervision of the guardians. It has also been noted that most registered guardianship clients are today not elderly persons but young and middle aged persons e.g. due to substance abuse. The number of guardianships in all age groups is increasing.

Guardianship Services Act (442/1999) in English (unofficial translation):
<https://www.finlex.fi/en/laki/kaannokset/1999/19990442>

Act on Continuing Powers of Attorney (648/2007) available on www.finlex.fi (Finnish and Swedish only)