

◆ Voluntary Guardianship

(任意後見について)



The difference between “voluntary guardianship contract” and “mandate contract”

Voluntary guardianship contract originates from the mandate contract, which, for example requests a judicial scrivener to register the land sale, or asks a medical doctor to perform medical examination. In case of “voluntary guardianship contract”, the law provides that the contract be registered in the Legal Affairs Bureau in the form of a notarized document between the mandatary (to-be guardian) and the mandator (to-be adult ward). As such, any contract which is not notarized, being a simple “mandate contract” does not qualify for “voluntary guardianship contract” and, therefore, legal protection is not provided.

● Voluntary Guardianship Contract



The difference between “voluntary guardianship” and “statutory guardianship”

In case of a voluntary guardianship contract, you can specify, when you are well, how you want to be treated when and if your mental capacity is impaired. On the other hand, if you are demented without any contract, your relative within the 4th degree of kinship will file with the family court to designate an adult guardian.

How you are treated by the designated guardian depends upon how the petitioner (your family member) thinks and there is no way that your desires be reflected.

Which to choose, voluntary guardianship or statutory guardianship?

We recommend our members to choose a “voluntary guardianship contract” based on the philosophy of our pre-need agreement that places utmost importance on “self-determination”. No one can be 100% sure that his or her mental capacity will not be impaired due to dementia or other diseases and injuries.

Liss System asks its members to sign a “voluntary guardianship contract” as a prerequisite for our accepting the pre-need agreement.

List of authorities of representation of voluntary guardianship contract

“Voluntary guardianship contract” is a mandate contract, i.e., an agreement by which you ask Liss System to do what you want when you are in need of a guardian. The agreed assignments are described in the list of authorities of representation, the good or poor result of which determines the level of your welfare when you are demented. The manner of making the list is also prescribed by law. There are 2 listing formats, format No. 1 and No. 2. Format No. 1 lists a series of items of authorities of representation, from which you choose by checking those you want. Format No. 2 sets out the contents of agreed authorities of representation in writing, which therefore enables a more flexible response.

What is “Guardianship Notes?”

Voluntary Guardianship Contract can prescribe “juristic acts” only, namely, the authorization of representation, e.g. withdrawal of deposits, disposition of the real estate, making a contract to use nursing care insurance, to enter a senior residence, etc. Your preference of “a senior residence which has lots of sunlight and serves good food” cannot be included in the contract, because such items cannot be officially registered as part of the guardianship business.



In signing the voluntary guardianship contract as part of the pre-need agreement, you prepare “Advance Directive on the Performance of Guardianship” (“Guardianship Notes”) specifying how you wish to live your daily life, e.g., “I want to go to the hairdresser at least once a month”, etc. The “Guardianship Notes” is kept in the computer, and once the guardianship business actually begins, services are provided in accordance with what you have described in the Notes.

Good guardians and bad guardians

Whom you ask to be your guardian is very important. The Civil Code stipulates in Article 858 (“Respect for Intention and Personal Consideration of Adult Ward”) as follows: “A guardian of an adult, in undertaking affairs related to the life, medical treatment and nursing, and administration of property of an adult ward, shall respect the intention of the adult ward and consider his/her mental and physical condition and living circumstances.” However, there is no more detailed guideline in the provision. Supposedly, it is because the obligation to “consider his/her mental and physical conditions and living circumstances” of the adult ward knows no boundaries, and some guardians may think what is not included is not within the scope of their jobs and therefore the law assumes that all the guardians, without specific guidelines, will perform good guardianship business by their enthusiasm, commitment and conscience. In reality, however, not all the guardians have such enthusiasm and conscience, which makes the people feel uneasy.

In this sense, you can trust us, as we know you and support you from the time when you are well both physically and mentally. You can rely on us without worries.

