



*The National Trust for the Welfare of  
Persons with Autism, Cerebral Palsy,  
Mental Retardation and Multiple  
Disabilities.*  
*Empowering Abilities, Creating Trust*

## FAQs

### Frequently Asked Questions on Legal Guardianship & LLC

- 1. Is it mandatory and absolutely necessary that a legal guardian be appointed for each person with disability?

Though it is not mandatory to apply for legal guardianship of a person with disability, since the National Trust Act, 1999 has made provision for such appointment it is always advantageous to apply for legal guardianship under the provisions of the said Act. Such occasion may arise when a person with disability has to deal with issues related to himself, his interests and his properties and since he/she may not always be able to take appropriate decisions in those respects, it would be in the best interests if represented by a legal guardian in such matters.

Elaboration of Section 14(3) of NT Act read with Form B under National Trust Rules and as per advice of ALA.

- 2. Does the Local Level Committee have any inherent powers as the Courts have?

A friend of a person with disability cannot apply for guardianship but he can be appointed as a guardian if a parent or a sibling or a relative recommends / applies for the appointment of such a person as legal guardian

Elaboration of Section 14(1) of National Trust Act.

- 3. Can a society apply for guardianship of a person with disability?

Under Section 14(2) of the National Trust Act, 1999, it is open to a registered organization to be the Local Level Committee for appointment of a guardian for a person with disability. The registered organization may apply to a registered society, trust or association of persons who have been registered under Section 12 of the- National Trust Act by the Board. Such an organization must fulfil the criteria laid down for them to make such application.

- 4. Can a minor act as a guardian?

A “minor” is a person who has not completed 18 years of age. Such minor cannot act as guardian of a person with disability under the National Trust’s Regulations.

**Source:** Indian Contract Act, 1872.

– 5. Can an application for guardianship be made for a ward who lives abroad?

No. It would not be possible for a Local Level Committee to appoint a guardian who is living abroad since applicability of National Trust Act is the whole of India under Section 1(2) of the Act. As per Section 17(1)(iii)(a) of National Trust Rules the person whose name has been suggested for appointment as guardian should be a citizen of India. Further under the Trust’s Regulation 12(6), both the guardian and the ward must be living within the jurisdiction of the Local Level Committee.

– 6. What is the position of a ‘testamentary guardian’ appointed under a ‘Will’?

It is open to a parent to appoint a guardian for his minor child (who may also be a person with disability) under a ‘Will’ or other testamentary instrument. Where such testamentary guardian has been appointed there is intended to be the legal guardian under the National Trust Act. The LLC may take into consideration the facts and circumstances of the testamentary guardianship.

**Source:** Under Section 9 of Hindu Minority and Guardianship Act, 1956 Transfer of Property Act, 1882

– 7. Can separate guardians be appointed for the care of the person and for the care of the property of a person with disability?

Yes, it is possible that guardians are appointed separately for the care of the person and for the care of the property of the person with disability. However, the Local Level Committee will look into all the facts and circumstances of the case before taking such a decision.

**Source:** Section 14(3) of NT Act and Form B under NT Rules and as per advice of ALA.

– 8. Can a foreigner apply for guardianship?

No, a person who is not a citizen of India cannot apply for guardianship of a person with disability in India under the Trust’s Rules Section 17(1)(iii)(a).

– 9. What will happen if the guardian is convicted by a court of law and sent to prison or develops serious incapacity to discharge his duties or develops interests adverse to that of the ward or leaves the district permanently or becomes bankrupt?

In all of these circumstances, the guardian will be liable to be removed and the Local Level Committee will have to appoint another guardian. It may also place the ward in the charge of an eligible person or institution till a guardian is appointed on regular basis.

**Source:** Section 17(1)(iii) of NT Rules read with section 11(5) of NT Regulations.

## Frequently Asked Questions on scope of LLC with regard to Legal Guardianship

### - 1. What is the jurisdiction of a Local Level Committee?

The territorial jurisdiction of a Local Level Committee is defined under Section 13(1) of the National Trust Act, 1999. The Local Level Committee may be constituted for such 'area' as may be specified by the Board from time to time. This area may be comprised of one or more districts. It is also open to the Board to alter the area specified by it, thus, the territorial jurisdiction of the Local Level Committee will extend over the area so specified by the Board. Applicants for guardianship and their wards will have to belong to those areas and be residing there.

**Source:** Section 13(1) read with Section 12(6) of NT Regulations.

### - 2. Does the Local Level Committee have any inherent powers as the Courts have?

National Trust Act, 1999 has not bestowed any inherent powers to LLCs akin to those exercised by the courts. However, LLCs may reconsider and amend their own orders if they feel that the ends of justice have not been achieved through their earlier orders. This is possible as part of natural justice.

**Source:** As per legal advice of ALA.

### - 3. Can a Local Level Committee vary the powers of a guardian after appointing one?

The Local Level Committee can vary the powers of a guardian after having appointed him but this will depend upon the developments and the circumstances of a given case and should be properly illustrated.

**Source:** Section 14(3) of National Trust Act read with National Trust Regulations Section 13(6).

### - 4. Can the Local Level Committee ask for "security" from the proposed guardian to ensure that he fulfills his obligations?

A Local Level Committee can ask for security to be provided by a proposed guardian to ensure that the guardian will fulfill his obligations and in case of any breach thereof, the guardian will be liable to the Committee for a given sum of money. Normally, such security is given by way of guarantees/ undertaking or bonds, which can be enforced.

**Source:** Read Section 13(2) and (6) of National Trust Regulations and principles of natural justice.

- 6. Can a Local Level Committee appoint a guardian without any formal application before it?

Where a Local Level Committee finds that a guardian has to be appointed for a person with disability for whom no formal application for guardianship has been made, it may under Regulation 13(4) ask a registered organization to initiate the process of guardianship for such person. Such person may be a vagrant, destitute or an abandoned person with disability.

- 7. What about suits filed to restrain Local Level Committee from granting applications for guardianship?

A Local Level Committee will be bound by any restraint order passed by any Court restraining it from granting an application for guardianship. Until the restraint order is revoked, a Local Level Committee is not free to proceed further with the guardianship case and has to keep it in abeyance.

**Source:** As per legal advice of ALA.

- 8. Since Local Level Committee has no powers of Court, will it have any power over third parties? Can it summon other persons or take evidence as courts can do?

In order to consider applications for guardianship impartially and fairly, a Local Level Committee may call for other persons and take their evidence or hear them depending upon the facts and circumstances of the case. In the event a third person called by the Committee does not appear, it will have to do without the appearance of such person as it has no powers to enforce such presence. The Committee can also take affidavits by way of evidence from witnesses and applicants and allow cross-examination by objectors to guardianship applications.

**Source:** Section 13(2) of Regulations.

- 9. How does Local Level Committee serve notice, as summons?

Though the Local Level Committee cannot issue a summons to a person as is the procedure of a regular court, it can send a letter requesting a person to appear before it, or produce any documents or tender evidence.

**Source:** Section 13(2) of National Trust Regulations.

- 10. Can a Local Level Committee ask for production of the person with disability before it?

A Local Level Committee can ask for production of a person with disability before it in order to assess the needs of such person.

**Source:** Section 13(5) of National Trust Regulations.

- 11. Can a Local Level Committee appoint a guardian for property outside its jurisdiction?

Yes, a Local Level Committee can appoint a guardian for managing property of a person with disability even if such property is outside its jurisdiction. However, it will have to be clarified by the Committee as to how the guardian will manage such property and submit reports and inventories to the Local Level Committee, which has appointed the guardian.

**Source:** As per legal advice of ALA.

- 12. When there is a dispute about the property of a person with disability and there are other claimants, what can the Local Level Committee do?

It will be necessary for the Committee in cases of disputes between parties in regard to immovable properties to ask the contending parties to get the disputes over property resolved by a Civil Court of Law. Till then, appointment of guardian to manage the disputed property will have to be kept in abeyance.

**Source:** As per legal advice of ALA.

- 13. When a Local Level Committee finds fraud or other offence against guardian, can it complain to the Area Magistrate for criminal action?

It is open to the Local Level Committee to complain to the area magistrate to take action if any act of criminal nature such as fraud, forgery, defalcation or breach of trust is discovered in a given case. Alternatively, the Committee can request the aggrieved person to institute such complaint and report to the Committee.

**Source:** As per IPC and CrPC