

Law on the protection of adults of January 1, 2013



Guardianship law has been completely revised. One of the objectives of the revision was to promote the right of self-determination. The new law introduces two legal instruments in this regard: a person with legal capacity can draw up an advance directive appointing someone to legally care for and represent them in the event of their incapacity. They can also draw up a living will that states which medical treatment they consent to, or nominate another person to consent to such treatment on their behalf.

What's it about?

With the exception of the provisions on involuntary commitment (1981), until the current revision, Swiss guardianship legislation as set out in the Swiss Civil Code (Art. 360–455 SCC) had

remained more or less unchanged since its implementation in 1912. Guardianship law concerned the legal measures that can be taken to protect persons who were unable to take care of their own affairs. The old law made provision for three official measures, i.e. guardianship, limited guardianship, and legal assistance. These statutory measures, however, were not flexible enough to meet the needs of all affected individuals. Today, the right of self-determination and the help given to others to let them help themselves are given more priority than in the era when the Swiss Civil Code was adopted. Official decisions meet with less acceptance, some people under guardianship are more demanding, care given in a spirit of partnership is given more weight, and a number of terms are now seen to be discriminating and stigmatizing. The revision is intended to bring guardianship legislation into line with modern circumstances and attitudes. The amended articles of the Swiss Civil Code entered into force on January 1, 2013. The Federal Council issued an investment ordinance at the same time.

Most important changes

The revised law has led to changes in the following areas:

Promotion of right of self-determination by way of personal foresight

Individuals can draw up an advance directive to appoint someone to take care of them in the event of their incapacity and a living will to issue instructions on the medical treatment they may be given if they wish to ensure that they will never become dependent on the authorities.

Strengthening of family solidarity and relieving the burden on the state

The spouse or registered partner is given representative authority by law and must be involved in all medical decisions by the doctor.

Tailor-made official measures

Instead of standard measures, the authorities can in the future order only as much official support as is really required in an individual case. Tailor-made official assistance can be provided to arrange personal, representational, asset management, co-operation, or other comprehensive support to persons who need legal assistance.

No publication of restrictions or withdrawal of legal capacity

Under the new law, the appointment of a guardian will no longer be published in the newspaper, as this is seen as a stigmatizing measure. The legal advisor is required to inform third parties of their appointment to the extent required to carry out their duties. In contrast to the practice under the old law of depriving an individual of their legal capacity, legal capacity can also be withdrawn in specific areas only.

Special agencies to serve as child and adult protection agencies

Under the new law the cantons have to appoint special agencies to take on this role, which has led to structural reforms in all cantons. Instead of the previous guardianship authorities (depending on the canton, courts, or local government offices), the cantons now establish regional or cantonal adult protection agencies.

Changes to matrimonial and inheritance law

Under the new law, parents can appoint a reversionary heir to the residuary estate if they have children who are permanently incompetent to judge (known as disabled children's trust). Under certain circumstances, inheritance contracts can also be drawn up with the consent of the legal advisor. Anyone who is competent to judge can get married. The consent of the legal representative is no longer required.

Terminology

The new law on the protection of adults eliminates negative terms such as deprivation of legal capacity, under protection of a legal advisor, or guardianship. The old guardianship authorities have become child and adult protection agencies. While the term "official assistance" is used for adults, the term "guardianship" is still used for minor children.

New self-determination options

The new law attaches great importance to personal decisions regarding one's future. Personal decisions can be made in advance in the following areas:

Advance directive

A person with legal capacity can appoint a natural person or a legal entity to assume their personal or financial care in the event of their incapacity or to represent them in all legal matters. The advance directive must contain a description of the tasks to be delegated to the representative, and can also include precise instructions in this regard. The advance directive must be written by hand or be certified by a notary public.

Living will

A person with legal capacity can draw up a living will which states which medical treatment they consent to in the event of their legal incapacity. They can also appoint a natural person who should discuss the medical procedures with the doctor and make decisions on their behalf if they should become mentally incompetent. They can also issue instructions to this person.

Dispositions under inheritance law

If a descendant is permanently incapacitated and does not leave children or a spouse behind, the testator can appoint a reversionary heir to the residuary estate. Under certain circumstances, persons subject to official assistance are also able to conclude inheritance contracts.

Asset management

On July 4, 2012, the Federal Council adopted a new ordinance on the management of the assets of persons under official assistance or guardianship (VBVV), which entered into force together with the new law on the protection of adults on January 1, 2013. It replaces the current cantonal investment regulations and standardizes the investment and safekeeping of assets managed under official assistance or guardianship.

Transitional provisions

Under the old law, persons declared legally incompetent automatically became subject to comprehensive official assistance under the new law. The previous instruments of legal assistance and limited guardianship lapse at the latest after three years if no new measures are ordered. Under the Federal Council's investment ordinance, all investments must be converted by the end of 2014.

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CREDIT SUISSE (Switzerland) Ltd.

P.O. Box 100

CH-8070 Zurich

credit-suisse.com

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