

Act on the Voluntary Guardianship Contract

(Act No. 150 of December 8, 1999)

(Purpose)

Article 1 This Act prescribes special provisions on the formalities for, the effect of, and other things concerning the voluntary guardianship contract, as well as necessary matters related to the supervision of the voluntarily appointed guardian.

(Definitions)

Article 2 In this Act, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

- (i) the term "voluntary guardianship contract" means a contract of mandate through which the mandator who is in a state in which their capacity to appreciate their own situation is inadequate due to a mental disorder delegates all or part of the affairs related to their daily life, medical treatment and nursing, and administration of property, and grants the authority to act as a representative regarding the affairs related to the delegation to a mandatary, and which provides that the authority becomes effective after a supervisor of the voluntarily appointed guardian is appointed pursuant to the provisions of Article 4, paragraph (1);
- (ii) the term "ward" means the mandator of the voluntary guardianship contract;
- (iii) the term "mandatary of voluntary guardianship" means the mandatary under the voluntary guardianship contract, before a supervisor of the voluntarily appointed guardian has been appointed pursuant to the provisions of Article 4, paragraph (1); and
- (iv) the term "voluntarily appointed guardian" means the mandatary under the voluntary guardianship contract, after a supervisor of the voluntarily appointed guardian has been appointed pursuant to the provisions of Article 4, paragraph (1).

(Formalities of a Voluntary Guardianship Contract)

Article 3 A voluntary guardianship contract must be made in the form of a notarial instrument prepared in the format specified by Order of the Ministry of Justice.

(Appointment of a Supervisor of the Voluntarily Appointed Guardian)

Article 4 (1) If a voluntary guardianship contract is registered, and the ward is

in a state in which their capacity to appreciate their own situation is inadequate due to a mental disorder, at the request of the ward, their spouse, a relative within the fourth degree of kinship, or the mandatary of voluntary guardianship, the family court will appoint a supervisor of the voluntarily appointed guardian; provided, however, that this does not apply in the following cases:

- (i) the ward is a minor;
- (ii) the ward is an adult ward, a person under curatorship, or a person under assistance, and it is found to be especially necessary in the interest of the ward to continue the guardianship, curatorship, or assistance;
- (iii) the mandatary of voluntary guardianship is one of the following persons:
 - (a) a person set forth in the items of Article 847 of the Civil Code (Act No. 89 of 1896) (excluding item (iv));
 - (b) a person who brings or has brought an action against the ward, the person's the spouse, or a lineal blood relative of that person; or
 - (c) a person who has acted unlawfully, or conducted an act of grave misconduct, or has any other circumstances that render them unfit for the duties of the voluntarily appointed guardian.
- (2) If the family court appoints a supervisor of the voluntarily appointed guardian pursuant to the provisions of the preceding paragraph and the ward is an adult ward, a person under curatorship, or a person under assistance, the court must revoke the decision to establish a guardianship, curatorship, or assistantship (hereinafter collectively referred to as "decision to establish guardianship, etc.").
- (3) If the supervisor of the voluntarily appointed guardian is appointed at the request of a person other than the ward pursuant to the provisions of paragraph (1), the consent of the ward must be obtained before that appointment; provided, however, that this does not apply if the ward is unable to express their intent.
- (4) If a supervisor of the voluntarily appointed guardian is vacant, the family court appoints a supervisor of the voluntarily appointed guardian at the request of the ward, a relative of the ward or the voluntarily appointed guardian, or by its own authority.
- (5) Even if a supervisor of the voluntarily appointed guardian has been appointed, the family court may further appoint a supervisor of the voluntarily appointed guardian if it finds this to be necessary, at the request of the persons set forth in the preceding paragraph or by its own authority.

(Grounds for Ineligibility as a Supervisor of the Voluntarily Appointed Guardian)

Article 5 The spouse, lineal blood relative, or sibling of the mandatary of

voluntary guardianship or voluntarily appointed guardian may not become a supervisor of the voluntarily appointed guardian.

(Respect for the Intent of the Ward)

Article 6 In conducting the affairs related to the delegation prescribed in Article 2, item (i) (hereinafter referred to as "affairs of the voluntarily appointed guardian"), a voluntarily appointed guardian must respect the intent of the ward, and also give consideration to the ward's mental and physical conditions and circumstances of their daily life.

(Duties of a Supervisor of the Voluntarily Appointed Guardian)

Article 7 (1) The duties of a supervisor of the voluntarily appointed guardian are as follows:

- (i) to supervise the affairs of the voluntarily appointed guardian;
 - (ii) to make regular reports to the family court regarding the affairs of the voluntarily appointed guardian;
 - (iii) to make necessary dispositions within the scope of the authority to act as a representative of the voluntarily appointed guardian if there are pressing circumstances; and
 - (iv) to represent the ward with respect to acts that constitute a conflict of interest between the ward and a voluntarily appointed guardian or the person representing the voluntarily appointed guardian.
- (2) A supervisor of the voluntarily appointed guardian may at any time demand that the voluntarily appointed guardian submit a report on the affairs of the voluntarily appointed guardian, or investigate the status of the affairs of the voluntarily appointed guardian or the financial status of the ward.
- (3) If the family court finds it necessary, it may demand that the supervisor of the voluntarily appointed guardian submit a report on the affairs of a voluntarily appointed guardian, order the supervisor of the voluntarily appointed guardian to investigate the status of the affairs of the voluntarily appointed guardian or the financial status of the ward, or order necessary dispositions with respect to the duties of the supervisor of the voluntarily appointed guardian to be taken.
- (4) The provisions of Article 644, Article 654, Article 655, Article 843, paragraph (4), Article 844, Article 846, Article 847, Article 859-2, Article 861, paragraph (2), and Article 862 of the Civil Code apply mutatis mutandis to a supervisor of the voluntarily appointed guardian.

(Dismissal of a Voluntarily Appointed Guardian)

Article 8 In the event of an unlawful act or grave misconduct on the part of the voluntarily appointed guardian, or when there are other circumstances that

render the voluntarily appointed guardian unfit for the duties of the voluntarily appointed guardian, the family court may dismiss the voluntarily appointed guardian at the request of the supervisor of the voluntarily appointed guardian, the ward, the relatives of the ward, or a public prosecutor.

(Cancellation of the Voluntarily Guardianship Contract)

Article 9 (1) The ward or the mandatory of voluntary guardianship may cancel the voluntary guardianship contract by means of a document certified by a notary at any time before a supervisor of a voluntarily appointed guardian is appointed pursuant to the provisions of Article 4, paragraph (1).

(2) The ward or the mandatory of voluntary guardianship may cancel the voluntary guardianship contract by obtaining the permission of the family court after a supervisor of a voluntarily appointed guardian is appointed pursuant to the provisions of Article 4, paragraph (1), only if there are legitimate grounds.

(Relationship to Guardianship, Curatorship, and Assistance)

Article 10 (1) If a voluntary guardianship contract has been registered, the family court may make a decision to establish guardianship, etc. only when it is found to be especially necessary in the interest of the ward.

(2) The mandatory of voluntary guardianship, voluntarily appointed guardian, or supervisor of the voluntarily appointed guardian may also request that the family court make a decision to establish guardianship, etc. in the case referred to in the preceding paragraph.

(3) If the ward receives a decision to establish guardianship, etc. after a supervisor of a voluntarily appointed guardian is appointed pursuant to the provisions of Article 4, paragraph (1), the voluntary guardianship contract ends.

(Requirement of Perfection for the Extinction of a Voluntarily Appointed Guardian's Authority to Act as a Representative)

Article 11 The extinction of a voluntarily appointed guardian's authority to act as a representative may not be duly asserted against a third party in good faith unless the extinction is registered.

Supplementary Provisions

This act comes into effect from April 1, 2011.

Supplementary Provisions [Act. No. 53 of May 25, 2011]

This Act comes into effect as of the date on which the new Non-Contentious Case Procedures Act comes into effect.