

任意後見契約に関する法律

Act on the Voluntary Guardianship Contract

(平成十一年十二月八日法律第百五十号)
(Act No. 150 of December 8, 1999)

(趣旨)

(Purpose)

第一条 この法律は、任意後見契約の方式、効力等に関し特別の定めをするとともに、任意後見人に対する監督に関し必要な事項を定めるものとする。

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.

(定義)

(Definitions)

第二条 この法律において、次の各号に掲げる用語の意義は、当該各号の定めるところによる。

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

一 任意後見契約 委任者が、受任者に対し、精神上の障害により事理を弁識する能力が不十分な状況における自己の生活、療養看護及び財産の管理に関する事務の全部又は一部を委託し、その委託に係る事務について代理権を付与する委任契約であつて、第四条第一項の規定により任意後見監督人が選任された時からその効力を生ずる旨の定めのあるものをいう。

(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);

二 本人 任意後見契約の委任者をいう。

(ii) the term "ward" means the mandator of the voluntary guardianship contract;

三 任意後見受任者 第四条第一項の規定により任意後見監督人が選任される前における任意後見契約の受任者をいう。

(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

四 任意後見人 第四条第一項の規定により任意後見監督人が選任された後における任意後見契約の受任者をいう。

(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).

(任意後見契約の方式)

(Formalities of a Voluntary Guardianship Contract)

第三条 任意後見契約は、法務省令で定める様式の公正証書によってしなければならない。

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.

(任意後見監督人の選任)

(Appointment of a Supervisor of the Voluntarily Appointed Guardian)

第四条 任意後見契約が登記されている場合において、精神上的障害により本人の事理を弁識する能力が不十分な状況にあるときは、家庭裁判所は、本人、配偶者、四親等内の親族又は任意後見受任者の請求により、任意後見監督人を選任する。ただし、次に掲げる場合は、この限りでない。

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:

一 本人が未成年者であるとき。

(i) the ward is a minor;

二 本人が成年被後見人、被保佐人又は被補助人である場合において、当該本人に係る後見、保佐又は補助を継続することが本人の利益のため特に必要であると認めるとき。

(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;

三 任意後見受任者が次に掲げる者であるとき。

(iii) the mandatory of voluntary guardianship is one of the following persons:
イ 民法（明治二十九年法律第八十九号）第四百四十七条各号（第四号を除く。）
に掲げる者

(a) a person set forth in the items of Article 847 of the Civil Code (Act No. 89
of 1896) (excluding item (iv));

ロ 本人に対して訴訟をし、又はした者及びその配偶者並びに直系血族

(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

ハ 不正な行為、著しい不行跡その他任意後見人の任務に適しない事由がある者

(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 前項の規定により任意後見監督人を選任する場合において、本人が成年被後見人、
被保佐人又は被補助人であるときは、家庭裁判所は、当該本人に係る後見開始、保佐
開始又は補助開始の審判（以下「後見開始の審判等」と総称する。）を取り消さなけ
ればならない。

(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 第一項の規定により本人以外の者の請求により任意後見監督人を選任するには、あ
らかじめ本人の同意がなければならない。ただし、本人がその意思を表示することが
できないときは、この限りでない。

(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 任意後見監督人が欠けた場合には、家庭裁判所は、本人、その親族若しくは任意後
見人の請求により、又は職権で、任意後見監督人を選任する。

(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 任意後見監督人が選任されている場合においても、家庭裁判所は、必要があると認
めるときは、前項に掲げる者の請求により、又は職権で、更に任意後見監督人を選任
することができる。

(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.

(任意後見監督人の欠格事由)

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

第五条 任意後見受任者又は任意後見人の配偶者、直系血族及び兄弟姉妹は、任意後見監督人となることができない。

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.

(本人の意思の尊重等)

(Respect for the Intent of the Ward)

第六条 任意後見人は、第二条第一号に規定する委託に係る事務（以下「任意後見人の事務」という。）を行うに当たっては、本人の意思を尊重し、かつ、その心身の状態及び生活の状況に配慮しなければならない。

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.

(任意後見監督人の職務等)

(Duties of a Supervisor of the Voluntarily Appointed Guardian)

第七条 任意後見監督人の職務は、次のとおりとする。

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

一 任意後見人の事務を監督すること。

(i) to supervise the affairs of the voluntarily appointed guardian;

二 任意後見人の事務に関し、家庭裁判所に定期的に報告をすること。

(ii) to make regular reports to the family court regarding the affairs of the voluntarily appointed guardian;

三 急迫の事情がある場合に、任意後見人の代理権の範囲内において、必要な処分をすること。

(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

四 任意後見人又はその代表する者と本人との利益が相反する行為について本人を代表すること。

(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 任意後見監督人は、いつでも、任意後見人に対し任意後見人の事務の報告を求め、又は任意後見人の事務若しくは本人の財産の状況を調査することができる。
- (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 家庭裁判所は、必要があると認めるときは、任意後見監督人に対し、任意後見人の事務に関する報告を求め、任意後見人の事務若しくは本人の財産の状況の調査を命じ、その他任意後見監督人の職務について必要な処分を命ずることができる。
- (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 民法第六百四十四条、第六百五十四条、第六百五十五条、第八百四十三条第四項、第八百四十四条、第八百四十六条、第八百四十七条、第八百五十九条の二、第八百六十一条第二項及び第八百六十二条の規定は、任意後見監督人について準用する。
- (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.

(任意後見人の解任)

(Dismissal of a Voluntarily Appointed Guardian)

第八条 任意後見人に不正な行為、著しい不行跡その他その任務に適しない事由があるときは、家庭裁判所は、任意後見監督人、本人、その親族又は検察官の請求により、任意後見人を解任することができる。

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.

(任意後見契約の解除)

(Cancellation of the Voluntarily Guardianship Contract)

第九条 第四条第一項の規定により任意後見監督人が選任される前においては、本人又

は任意後見受任者は、いつでも、公証人の認証を受けた書面によって、任意後見契約を解除することができる。

Article 9 (1) The ward or the mandatary 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 第四条第一項の規定により任意後見監督人が選任された後においては、本人又は任意後見人は、正当な事由がある場合に限り、家庭裁判所の許可を得て、任意後見契約を解除することができる。

(2) The ward or the mandatary 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.

(後見、保佐及び補助との関係)

(Relationship to Guardianship, Curatorship, and Assistance)

第十条 任意後見契約が登記されている場合には、家庭裁判所は、本人の利益のため特に必要があると認めるときに限り、後見開始の審判等を行うことができる。

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 前項の場合における後見開始の審判等の請求は、任意後見受任者、任意後見人又は任意後見監督人もすることができる。

(2) The mandatary 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 第四条第一項の規定により任意後見監督人が選任された後において本人が後見開始の審判等を受けたときは、任意後見契約は終了する。

(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.

(任意後見人の代理権の消滅の対抗要件)

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

第十一条 任意後見人の代理権の消滅は、登記をしなければ、善意の第三者に対抗することができない。

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.

附 則

Supplementary Provisions

この法律は、平成十二年四月一日から施行する。

This act comes into effect from April 1, 2011.

附 則 [平成二十三年五月二十五日法律第五十三号]

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

この法律は、新非訟事件手続法の施行の日から施行する。

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