

Guardianship in Florida

Guardianship is the process designed to protect and exercise the legal rights of individuals whose functional limitations prevent them from being able to make their own decisions. When the court removes an individual's rights to order his or her own affairs – whether one is dealing with a minor whose assets must be managed by another or an adult with a disability who is not capable of making decisions for him/herself – there is an accompanying duty to protect the individual. One of the court's duties is to appoint a guardian. All adult and minor guardianships are subject to court oversight.

The term “guardianship” describes the legal relationship between the guardian and the ward. A “guardian” is a surrogate decision-maker appointed by the court to make either personal and/or financial decisions for a minor or for an adult with mental or physical disabilities. The term “ward” describes a person whom the court has declared legally incapacitated (functional limitations prevent them from being able to make their own decisions) and has had some or all of his or her rights removed.

Guardianship For Minors

Florida law requires the court to appoint a guardian for minors in circumstances where the parents die or become incapacitated, or if a child receives an inheritance or proceeds of a lawsuit or insurance policy exceeding the amount allowed by statute. A guardian can be appointed to control both the custody of a minor and the minor’s finances. However, in some cases, one person may be appointed as the custodial guardian and a separate person appointed to be in charge of the minor’s finances. This person is called a custodian. This arrangement can be preplanned in a Will or may be imposed by the court.

Guardianship For Adults

Adult guardianship is the process by which the court finds an individual's ability to make decisions so impaired that the court gives the right to make decisions to another person. Guardianship is only warranted when no less restrictive alternative—such as durable power of attorney, trust, health care surrogate or proxy, or other form of pre-need directive—is found by the court to be appropriate and available.

Florida law allows both voluntary and involuntary guardianships. A voluntary guardianship may be established for an adult who, though mentally competent, is incapable of managing his or her own estate and who voluntarily petitions for the appointment. An involuntary guardianship is requested from the court by someone other than the alleged ward.

The Process

In order to establish a guardianship, someone must file a petition with the local court where the alleged ward resides. This process is completed by hiring a local attorney to draft the petition. Once the petition is filed, the court will appoint an attorney to represent the alleged incapacitated person. Additionally, a three-person examining committee will be appointed. The committee is made up of three medical professionals including at least one physician or psychiatrist. Each medical professional will examine the alleged incapacitated person for physical and mental health, as well as functional ability, and file a report of their findings with the court. Within 14 days of filing the reports, the judge will schedule an Adjudicatory Hearing where the judge will determine whether the person is in fact incapacitated and will appoint a guardian if required.

Other Considerations

If you notice indications of neglect, abuse, or abandonment of an adult or child, contact the Department of Children and Families or the Department of Elder Care. These agencies work together to protect children, disabled adults, and elderly persons from further occurrences of abuse, neglect or exploitation.

Depending on the situation requiring the guardianship, the ward may be owed Social Security disability or other governmental payments. These funds can be essential to a guardian in providing necessary care to the ward. Guardians should ensure that their wards are receiving all their benefits.

Common Questions:

Who Can Be A Guardian? Any resident of the State of Florida who is 18 years old and any non-resident who is related to the ward by blood, marriage, or legal adoption may be a guardian. This includes the spouses of brothers, sisters, uncles, aunts, nieces and nephews as well. The role of guardian does not have to fall to a single individual, but can be split between multiple family members. Additionally, a bank or trust company may be appointed the guardian of the ward's property, and a religious or charitable nonprofit corporation can be appointed the guardian of a ward's person. Last, if a ward has no one to care for them, a public guardian can be appointed. Any prospective guardian must submit an application listing their qualification to serve as a guardian. Additionally, every guardian must complete an 8 hour instructional training session covering the duties and responsibilities of a guardian.

How Much Does It Cost? The petitioners (persons requesting a guardianship) are required to pay filing fees when they present the petition to the local county clerk. These fees are subject to change annually. The fees currently are around \$430.00. If a determination of incompetence is required, there are additional costs for the three-person medical professional examining committee. Additionally, there are attorney fees. A rough estimate of cost is \$1000.00. These costs are generally paid from the property of the ward. The ward's health insurance may pay the costs associated with the examining committee in whole or in part. If the ward qualifies for indigent status (low income) the state may pay the fees.

How Quick Is The Process? For an uncontested guardianship, the process can usually be completed within 90 days. This process can be delayed if the guardianship is based on a mental health diagnosis due to the medical evaluation requirements.

What Is An Emergency Temporary Guardianship? After a petition has been filed, but before a final appointment of a guardian, the court may appoint an emergency temporary guardian for the person, property, or both of an alleged ward. Frequently, a request for emergency temporary guardianship is submitted at the same time the original petition is filed. In order to appoint an emergency temporary guardian, the court must find that there is imminent danger to the physical or mental wellbeing or safety of the person or that the person's property will be wasted, misappropriated, or lost. The authority of a temporary guardian expires 90 days after appointment unless there is a showing that the emergency condition still exists.

The material in this handout represents general legal advice. Since the law is continually changing, some provisions in this pamphlet may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.