

GUARDIANSHIP BASICS

A Handbook for Guardians



STATEWIDE PUBLIC GUARDIANSHIP OFFICE
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Introduction

The information in this handbook has been designed as an easy reference guide for guardians. The contents will cover general information that the court expects all guardians to be familiar with, a glossary of the most commonly used guardianship terms and some of the most frequently asked questions as they relate to guardianship issues.

The term guardianship describes a legal relationship between the guardian and the ward. The term ward describes a person whom the court has declared legally incapacitated and has had some or all of his or her rights removed.

It is important to understand that guardianship should be a last resort and established only in cases where lesser restrictive means of intervention are not possible.

This handbook has been designed as a helpful reference guide, but is not intended to be a substitute for obtaining the services of an attorney, nor can it substitute for the required guardianship training course.

Duties and Responsibilities as a Guardian

In order to ensure the guardian is acting in accordance with the law, Florida Statutes require guardians to submit reports to the court. These reports help the court to supervise the affairs of the ward and to monitor the action of the guardian.

A failure on the part of the guardian to comply with any requirement may result in the guardian having to appear before the court to explain his or her failure to properly fulfill his or her duties. This may result in sanctions against the guardian including removal as guardian or any other action the court may deem appropriate.

The duties and responsibilities included in this handbook may not include all of the duties and responsibilities required by your local court. It is important to check with your attorney to determine what, if any, additional duties your local court may require.

Glossary

Advance Directive: A witnessed written document or oral statement that provides instructions and preferences. Examples may include a healthcare surrogate, living will and durable power of attorney.

Alleged Incapacitated Person (AIP): A person who is the subject of a petition to determine capacity.

Annual Accounting: A report, filed by the guardian of the property, due to the court each year itemizing expenditures and receipts made on behalf of the ward during the previous year.

Annual Plan: A report, filed by the guardian of the person, due to the court each year specifying the medical, mental and physical care of the ward for the upcoming year.

Co-Guardianship: A guardianship with two or more persons acting as guardian for the person or property or both.

Emergency Temporary Guardian (ETG): A person appointed by the court when there appears to be imminent danger that the physical or mental health or safety of an alleged incapacitated person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. A petition to determine incapacity must be filed prior to the appointment of an ETG. The ETG is a temporary appointment although under certain conditions, the court may extend that appointment.

Final Accounting: A report, filed by the guardian of the property, that is required promptly upon his or her termination as guardian. The report will include a final itemization of expenditures made on behalf of the ward. If it appears that the guardian has made a full and complete distribution to the persons entitled and has otherwise fulfilled his or her duties, the court should approve the report. The guardian is authorized to retain from the ward's funds a sufficient amount to pay the final costs of administration.

Guardian: A person who has been appointed by the court to act on behalf of the ward. This person may be the guardian of the person or property or both.

- a. Limited Guardian: A person appointed by the court to exercise certain delegable rights, but not all of the delegable rights of the ward.
- b. Plenary Guardian: A person appointed by the court to exercise all of the delegable rights of the ward.

Guardianship: 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 they have not made plans for this time in their lives.

Incapacitated Person: A person who has been judicially determined to lack the capacity to manage some or all of his or her property or essential health and safety requirements.

Initial Inventory: A report, filed by the guardian of the property, that describes the ward's assets. This inventory must be filed with the court within sixty (60) days after being appointed guardian of the property.

Initial Plan: A report, filed by the guardian of the person, describing the care the ward will receive in accordance with the recommendation of the examining committee. The initial plan must be filed with the court within sixty (60) days after the Letters of Guardianship have been issued.

Letters of Guardianship: A legal document issued by the court designating a person to act as guardian on behalf of another person. These letters will specify the type of guardianship as well as the powers and duties of the guardian.

Minor: A person under the age of 18.

Professional Guardian: A person who has provided guardianship services to three or more wards by acting as their guardian. A person serving as a guardian for two or more relatives is not considered a professional guardian.

Public Guardian: A guardian that provides services for the incapacitated who have limited financial means and no willing family member or friend to serve as guardian. A public guardian must be designated as such by the Statewide Public Guardianship Office prior to the court appointing him or her to act as the guardian.

Statewide Public Guardianship Office (SPGO): SPGO is responsible for designating local offices of public guardian as well as the registration and education of professional guardians throughout Florida.

Successor Guardian: A person appointed by the court to assume the duties of guardian as a result of the death, resignation or removal of the previous guardian.

Veterans' Guardianship: The process designated to protect veterans and other persons who are entitled to receive benefits such as pension, compensation insurance or other monies, from the United States Department of Veterans Affairs as a result of service in the Armed Forces of the United States.

Voluntary Guardianship: A form of guardianship entered into voluntarily. This type of guardianship is created without an adjudication of incapacity. A certificate by a licensed physician is required asserting that the petitioner has been examined and that he or she understands the nature of the guardianship. The petitioner for the voluntary guardianship designates the guardian at the time the petition is filed.

Ward: A person who has some or all of his or her rights removed by the court and for whom a guardian has been appointed.

The Guardianship Process

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 and have not made plans for this time in their lives. People who need guardianship may have dementia, Alzheimer's disease, a developmental disability, chronic illness or other such conditions that generally cause functional limitations. Before a guardianship is established, it must be determined that the alleged incapacitated person (AIP) lacks capacity. Guardianship should be the last resort.

Note: The guardianship program is often confused with the Guardian ad Litem program, which is a program designed to improve the lives of abused and neglected children.

The guardianship process is as follows:

1. A petition is filed.

Any competent adult may file with the court a petition to determine another person's incapacity. Once the petition is filed, the court will then appoint an examining committee consisting of three members. The examining committee will conduct an evaluation and report back to the court. In addition, the court will appoint an attorney to represent the AIP.

2. A hearing is held.

The court will hold a hearing to review the reports of the examining committee. If the court finds the AIP to be incapacitated, the court must then determine if there is a less restrictive alternative to guardianship.

3. If necessary, a guardian will be appointed.

If the court determines the AIP is incapacitated and there are no less restrictive alternatives, then the court will appoint a guardian and issue letters of guardianship. Depending on the determination of the court, the AIP may require a guardian of the person, a guardian of the property or a guardian for both the person and the property.

Can anyone file a Petition for Incapacity?

The petitioner must be a competent adult who can attest as to why he or she believes the person may be incapacitated.

How long does this process take?

Once the Petition for Incapacity is filed with the court, the court, within five (5) days, will appoint an attorney to represent the AIP and an examining committee to conduct an evaluation. The examining committee will complete their evaluations and submit their reports back to the court within fifteen (15) days. The court will then set a hearing to be held within fourteen (14) days after receiving



the reports from the examining committee. The reports filed by the examining committee should include a diagnosis, prognosis and a recommended course of treatment.

Who are the members of the examining committee?

The three-member examining committee will consist of a licensed physician or a psychiatrist. The remaining members may be either another physician, psychologist, psychiatrist, gerontologist, registered nurse, nurse practitioner, licensed social worker or a lay person who, by knowledge, skill, experience, training or education, may advise the court in the form of an expert opinion.

Is there any cost to the incapacity process?

There will be a filing fee to be paid by the petitioner at the time of the filing of the Petition for Incapacity. In addition, there will also be the cost of the court-appointed attorney to represent the AIP and the fees charged by the examining committee. If the ward has assets, these costs may be paid from these assets. If the ward is indigent, these costs may be borne by the state. There may be additional fees once the guardianship has been established. Those fees will depend on the nature of the guardianship.

Types of Guardianships

Depending on the determination of the court and what will best serve the needs of the ward, the court may appoint a guardian of the person only, a guardian of property only or a guardian of the person and

property.

1. Guardian of the Person

The guardian of the person has the authority to exercise only the personal rights that have been removed from the ward by the court and delegated to the guardian.

The rights that may be removed from a person and delegated to a guardian include the right to contract, to apply for government benefits, to sue and defend lawsuits, to manage property or to gift or dispose of property, to determine his or her residence, to consent to medical or mental health treatment, and to make decisions concerning his or her social environment.

The guardian of the person has the responsibility of filing with the court the Initial Plan and the Annual Plans. These reports are covered in more detail under the section “**Reports required by the Court.**”

2. Guardian of the Property

The guardian of the property has the authority to exercise only the rights that have been removed from the ward by the court and delegated to the guardian. However, the guardian of the property does not have the authority to sell, transfer, mortgage or donate any of the ward’s property without prior approval from the court. It will be up to the court

to determine if any proposed transactions are appropriate for the ward.

Once letters of guardianship have been issued, property belonging to the ward (i.e., bank accounts, investment accounts, automobiles, homes, etc.) may need to be retitled or registered in the name of the guardianship, but not in the guardian's name only. As an example, the bank ac-



count or deed may read as *John Doe, guardian for Jane Smith*. The guardian of the property must use caution and avoid mixing the ward's funds with the guardian's personal assets. It is also the guardian's responsibility to provide the ward's Social Security number to any bank or brokerage firm so that any earned interest will be properly reported to the Internal Revenue Service.

The guardian of the property has the responsibility of filing with the court the Initial Inventory and Annual Accounting.

3. Guardian of the Person and Property

The guardian of the person and property has been given the responsibility by the court to make decisions regarding both the

personal and property rights of the ward. It will be the responsibility of the guardian of the person and property to file with the court all the required initial and annual reports.

4. Guardian of a Minor

Florida Statutes require a guardian of the property to be appointed in cases where a minor receives a net settlement in excess of \$15,000 as a result of a personal injury, property damage or wrongful death. The court, without adjudication of incapacity, may appoint a parent, sibling, next of kin or another person interested in the minor's welfare as the guardian. The guardianship will terminate upon the minor reaching the age of majority even if the guardian believes the ward lacks the maturity to properly handle the assets for which the ward is entitled. Guardianship of a minor, which is a legal relationship between the guardian and the ward, should not be confused with custody of the minor.

Who may serve as a guardian?

Any competent adult who is a resident of Florida may serve as a guardian. A non-resident of Florida may serve as a guardian if he or she is directly related to the ward or the adopted child or adoptive parents of the ward. In certain cases the court may appoint a professional guardian to act as a guardian for the person and/or property, or a corporate guardian, such as a bank or brokerage firm to act as guardian of the property.

Who may not serve as a guardian?

Florida Statutes prohibit the appointment of anyone as a guardian if they have been convicted of a felony, judicially determined to have committed abuse, abandonment or neglect against a child, or have been found guilty, regardless of adjudication, in certain other offenses. In addition, a person who may be unable to perform his or her duties due to illness or incapacity may not be appointed.

Is there any type of background investigation required?

The court may require a non-professional guardian to submit (at his or her own expense) to a background investigation, which may include a criminal and credit history check. If the court determines that a criminal and credit investigation is required, then the results of that investigation will be considered when the court appoints the guardian. For professional and public guardians, the court shall require that they, along with all employees who have a fiduciary responsibility to the ward, submit to a complete background investigation. *(Additional requirements for professional guardians may be found in the professional guardianship section in this handbook.)*

What type of training or education is required to be a guardian?

Once appointed as a guardian, whether as the guardian of the person or guardian of the property, Florida Statutes require the satisfactory completion of a training course within four (4) months of appointment.

Both the guardian of the person and the guardian of the property are required to satisfactorily complete an eight (8) hour training and instruction course. A guardian of the property for a minor is only required to receive four (4) hours of training and instruction. *(For professional guardians, refer to the professional guardianship section in this handbook.)*

Where can I take the required training course?

Contact your local clerk of court's office or check with your attorney for a listing of training courses in your area. *(For professional guardians, refer to the professional guardianship section in this handbook.)*

Why am I required to be represented by an attorney?

Florida Probate Rules require that every guardian be represented by an attorney admitted to practice in Florida.

Is the guardian responsible for the ward's debts?

A guardian does not pay bills or debts from his or her own assets; however, the guardian of the property is responsible for continuing to pay the ward's bills from the guardianship assets.

Reports Required by the Court

Guardians are required to file certain reports to the court that has jurisdiction over the guardianship. These reports help the court to supervise the affairs of the ward and to monitor the actions of the guardian. When a guardianship is established, certain rights are removed from the ward and designated to the guardian. In order to ensure that the guardian is completing his lawful duties and responsibilities, the guardian is required to follow certain statutory requirements regarding the filing of reports to the court. Failure to comply with any of the reporting requirements may result in the guardian having to appear before the court. These reports include:

1. Initial Plan

As the guardian of the person, you are required to submit to the court the Initial Guardianship Plan. The Initial Plan for the Ward must be based on the recommendations of the examining committee and must include provisions for medical, mental, personal care services and the

type of residential setting best suited for welfare of the ward. This Initial Plan must be filed with the court within (60) days after the Letters of Guardianship have been issued.

2. Annual Plan

As the guardian of the person, you are required to complete and submit to the court the Annual Plan. The Annual Plan must include the current location of the ward, the ward's condition, the ward's needs and whether there are any changes expected in the upcoming year. The Annual Plan must also include a report by the ward's physician that should include an evaluation of the ward's condition and a statement of the current level of capacity in addition to any rehabilitative services planned for the upcoming year.

3. Initial Inventory

As the guardian of the property, you are required to submit to the court an Initial Inventory within sixty (60) days after the court issues the Letters of Guardianship. The Initial Inventory must include a list of all the known assets and property belonging to the ward, the location of the assets and a list of any sources of income (i.e., Social Security, pension, rental income, etc.). The Initial Inventory becomes the basis for the Annual Accounting.



4. Annual Accounting

As the guardian of the property, you are required to file an Annual Accounting. Each year the Annual Accounting must include a complete and accurate account of any disbursements of the ward's property made during the previous year. It shall also include a year-end statement of all the ward's accounts from each financial institution where assets are being held. The guardian is required to preserve all receipts and proof of payment for a period of three (3) years after being discharged as the guardian.

5. Simplified Annual Accounting

In a guardianship of the property, where all the assets are maintained in a designated depository and the only transactions that occur in the account are interest accrual deposits pursuant to a settlement or financial institution service charges, the guardian of the property may file a Simplified Accounting. The Simplified Accounting must also include a year-end statement from the financial institution.

Frequently asked Questions

What should be done if there are additional assets found after the filing of the Initial Inventory?

If property is discovered after the inventory is completed and submitted to the court, an amended inventory should be filed with the court.

Does anyone check the accuracy of the Annual Reports after they are submitted to the court?

The Clerk of Court is required by Florida Statutes to review most annual reports. Once the reports are audited by the Clerk of Court, they are forwarded to the court for review and approval.

Professional Guardians

A professional guardian is a guardian who has received at any time compensation for services provided to more than two wards.

Professional guardians are required to obtain a minimum of forty (40) hours of instruction and training within one (1) year of appointment. It is followed by a minimum of sixteen (16) hours of continuing education every two (2) calendar years. Professional guardians must also pass the Florida professional guardian competency exam. The Statewide Public Guardianship Office must approve any continuing education training courses.

A professional guardian is required to register with the Statewide Public Guardianship Office no later than thirty (30) days prior to his or her bond anniversary date. The required registration form and the required registration fee must be submitted along with a credit and criminal report, proof of having completed the required forty (40) hour professional guardianship course, proof of a \$50,000 blanket bond and proof of completion of sixteen (16) hours of continuing education requirements every two (2) years since becoming a professional guardian.

Who determines if the fees charged by a professional guardian are reasonable?

A professional guardian is entitled to reasonable fees for services and costs incurred while providing services on behalf of the ward. Prior to any fees being paid to a professional guardian from the assets of the ward, the court will review the petition and consider the amount of time involved and the labor required to provide the services. The professional guardian must provide to the court an itemized description of the services performed for any fees they seek.

Are professional guardians bonded?

Florida Statutes require a professional guardian to post a blanket fiduciary bond with the Clerk of Court within the local judicial circuit. The bond must be maintained by the professional guardian in an amount of at least \$50,000 and must cover all wards that the guardian has been appointed to represent.



What type of background check is required of professional guardians?

A professional guardian and employees of a professional guardian who have a fiduciary responsibility to a ward are required by Florida Statutes to submit to a credit and criminal history at least every two (2) years. In addition, each professional guardian must register with the Statewide Public Guardianship Office annually. The annual registration requires all professional guardians to provide the Statewide Public Guardianship Office a completed registration form, applicable fees, documentation that the bonding and educational requirements have been met, and that a criminal and credit background investigation has been completed. The registration must be completed on standard forms provided by the Statewide Public Guardianship Office and may be obtained from the Department of Elder Affairs Web site or by calling the Statewide Public Guardianship Office.

As a professional guardian, how do I get a list of training courses?

For a complete list of professional guardianship courses you may contact the Statewide Public Guardianship Office at (850) 414-2381 or check the online calendar on the SPGO Web page at:

<http://elderaffairs.state.fl.us>.

Public Guardians

In Florida, the Statewide Public Guardianship Office designates Offices of Public Guardian. A public guardian acts as guardian for incapacitated persons who lack a willing and qualified family member or friend to serve as their guardian and who do not have adequate income or assets for the compensation of a private guardian.

The role of the public guardian is to primarily serve the incapacitated, who are of limited financial means, and is vested with all the powers and duties as any other guardian.

Where can I find my local office of the Public Guardian?

At the present time, public guardianship exists in numerous counties throughout the state of Florida with some of the offices providing service to more than one county. A current list of local offices may be found on the Statewide Public Guardianship Office Web page at:

<http://elderaffairs.state.fl.us>.

Further Questions

If you have further questions about public guardianship or would like information on how to become a professional guardian, you may contact the Statewide Public Guardianship Office at (850) 414-2000, write to Statewide Public Guardianship Office at 4040 Esplanade Way, Tallahassee, FL 32399-7000, or visit our Web site at

<http://elderaffairs.state.fl.us>.

For questions related to family guardianship, please contact your local probate court.

The Statewide Public Guardianship

Office is located at:

**4040 Esplanade Way
Tallahassee, Florida 32399-7000
850-414-2381
<http://elderaffairs.state.fl.us>**

This handbook, created in June 2004, and updated in May 2006 and February 2009, is intended solely as a resource. Because of periodic updates made in Florida Statutes it is recommended that prior to making any legal decisions you first consult a licensed attorney.