

Guardianship

Frequently Asked Questions (FAQ)

Q

WHAT IS GUARDIANSHIP?

A

A guardianship is a legal proceeding in the Circuit Court of Florida, where a person (the guardian) is appointed by the court to exercise the legal rights and duty to care for a person (the ward) and his/her property.

Q

WHAT DOES THE TERM "WARD" MEAN?

A

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

Q

WHO MAY SERVE AS A GUARDIAN?

A

Any adult resident of Florida can serve as a guardian. A relative of the ward who does not live in Florida can also serve as guardian. Persons who have been convicted of a felony cannot be appointed.

Institutions such as a bank trust department, a nonprofit religious or charitable corporation, a professional guardian or a public guardian can be appointed guardian. The court gives consideration to the wishes expressed by the incapacitated person in a written declaration of a pre-need guardian or at the hearing.

Q

IS A GUARDIANSHIP THE ONLY MEANS OF HELPING AN INCAPACITATED PERSON?

A

No. Florida law requires the use of less restrictive alternatives to protect persons incapable of caring for themselves and managing their financial affairs whenever possible. If a person creates an advance health care directive and a durable power of attorney or revocable living trust while competent, he or she may not require a guardian in the event of incapacity.

Q**HOW IS AN ADULT DETERMINED TO BE INCAPACITATED?****A**

An adult may file a petition with the court to determine another person's incapacity by setting forth factual information upon which they base the belief that the person is incapacitated. The court then appoints a committee of three professionals to examine the alleged incapacitated person and report their findings to the court.

The court will appoint an attorney to represent the person alleged to be incapacitated unless the person is represented by their own attorney. If the examining committee concludes that the alleged incapacitated person is not incapacitated in any way, the court will dismiss the petition.

If the examining committee finds the person to be incapable of exercising certain rights, the court schedules a hearing to determine whether the person is totally or partially incapacitated. A guardian is usually appointed at the end of the incapacity hearing.

Q**WHY A GUARDIAN FOR A MINOR?****A**

A child's parents are the child's natural guardians and in general may act for the child. In circumstances where the parents die or become incapacitated or if a child receives an inheritance, proceeds of a lawsuit or an insurance policy exceeding \$15,000, the court must appoint a guardian.

Both parents or a surviving parent may make and file a written declaration with the Clerk of Courts, naming a guardian of the child's person or property to serve if both parents die or become incapacitated. A guardian may also be designated in a will in which the child is a beneficiary.

Q**MUST A GUARDIAN BE REPRESENTED BY AN ATTORNEY?****A**

Yes. The Florida Probate Rules require that every guardian be represented by a Florida bar attorney.

Q**DO FILING FEES AND AUDIT FEES APPLY?****A**

Yes. See the Clerk of Courts Court Division [Fees](#).

Q**WHAT DOES A GUARDIAN DO?****A**

The guardian of the ward's person may exercise those rights that have been removed from the ward and delegated to the guardian by the court. These may include providing medical, mental and personal care services and determining the place and kind of residential setting best suited for the ward. The guardian of the person must file an initial plan for the ward's care and then an annual plan detailing the plans for the ward's care.

A guardian who is given authority over any property, real or personal, of the ward shall inventory the property, protect, preserve and invest it prudently and use it for the ward's support. The guardian is required to account for the property by filing a detailed inventory and then conduct annual accounting reports with the court.

In addition, the guardian must obtain court approval for certain financial transactions.

Q**IS A GUARDIANSHIP PERMANENT?****A**

Not necessarily. If a person recovers in whole or part from the condition that caused him or her to be incapacitated, the court will have the ward re-examined and can restore some or all of the person's rights.

Q**IS A GUARDIAN ACCOUNTABLE?****A**

Yes. Guardians are usually required to furnish a bond and may be required to complete a court approved training program. A guardian who does not properly carry out his or her responsibilities may be removed.

Q**DOES ANYONE CHECK THE ACCURACY OF THE REPORT AFTER THEY ARE SUBMITTED TO THE COURT?****A**

The Clerk of Courts is required by Florida Statute to review the plans, inventories and accounting reports. Once the reports are audited by the Clerk of Courts, they are forwarded to the Court for review and approval.

Q**WHAT IS THE GUARDIANSHIP AUDITOR'S ROLE?****A**

Yes. See the Clerk of Courts Court Division [Fees](#).