

Guardianship Basics

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Florida Statutes Chapter 744 Legislative Intent

- Use least restrictive form available
- Incapacitated persons to participate as fully as possible
- Last resort

Florida Probate Rules govern proceedings

- Rules of Civil Procedure apply for discovery only
- Rules of Civil Procedure apply to Adversary Proceedings

Counsel for Alleged Incapacitated Person (AIP)

- Attorney must be appointed for AIP
 - Regional Counsel if indigent
 - Private attorney if not indigent, AIP can substitute his or her own
- Attorney for AIP cannot be attorney for petitioner, attorney for proposed guardian, or guardian of AIP

Types of Guardianships

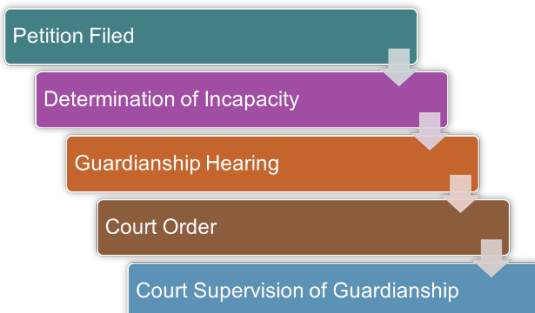
- Natural
- Minor
- Emergency Temporary
- Standby
- Preneed
- Foreign
- Guardian Advocate

Pre-need Guardian (744.3046)

Allows both parents or the surviving parent to nominate a pre-need guardian of the person and property for their child(ren)

Disqualification [744.309(3)]

- convicted felon
- incapacity or illness prevents discharge of duties
- otherwise unsuitable
- judicially determined to have committed abuse, abandonment, or neglect against a child as defined in §39.01 or §984.03(1), (2), and (37)
- found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under §435.04 or similar statute of another jurisdiction



Petition to Determine Incapacity (744.3201)

- Information about petitioner & AIP
- Specific factual information & allegations of incapacity

Notice [744.331(1)]

- Must be served on & read to AIP
- Must state the time & place of the hearing

Examining Committee [744.331(3)]

- Three members
- Report to the court within 15 days after appointment

Incapacity Hearing

- Clear and convincing evidence required to find AIP incapacitated
- Must consider if alternatives to guardianship
- DPOA automatically suspended for agents except parent, spouse, child, or grandchild

Petition for Appointment (744.334)

- Nature and value of property subject to the guardianship
- Reasons why this person should be appointed guardian

Emergency Temporary Guardianship 744.3031 and 5.648

- requires imminent danger to person and/or danger of waste, misappropriation, or loss of property
- 90 days with a 90-day extension for ETG Letters (total 180 days)

Rights Always Retained (744.3215)

Rights Removed (nondelegable)

- To marry*
- To vote
- To personally apply for government benefits
- To have a driver's license
- To travel
- To seek or retain employment

Rights Removed (delegable)

- To contract
- To sue & defend lawsuits
- To apply for government benefits
- To manage property or to make any gift or disposition of property
- To determine residence
- To consent to medical & mental health treatment
- To make decisions about social environment or other social aspects of life

Credit and Criminal Investigations (744.3135)

- Application for Appointment
- Guardian Education

Alternatives to Guardianship

- Durable Power of Attorney
- Trust

- Healthcare surrogate
- Money management strategies
- Joint tenancy
- Case management services
- Protective services
- Advocacy services
- Supported Decision Making Agreement

Statutory Options

Financial

- Convenience accounts - \$655.80
- Representative Payee

Medical

- Proxy - \$765.401
- Persistent Vegetative State - \$765.404

Proxy (765.401)

- The judicially appointed guardian or guardian advocate
- The spouse
- An adult child or a majority of the adult children
- A parent
- The adult sibling or a majority of the adult siblings
- An adult relative who has exhibited special care and concern, who has maintained regular contact, who is familiar with the patient's activities, health, and religious or moral beliefs
- A close friend
- A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court- approved guardianship program

Letters of Guardianship

- Proof of Authority
- Order Determining Incapacity
- Order Appointing Guardian
 - Surety Bond
 - Depository Accounts

Authorization to Act

- 744.441 - 22 areas where the guardian must receive court approval to act
- 744.444 powers without court approval
- 744.446 requires the court to approve any transactions which may be a conflict of interest

Extraordinary Authority (744.3215(4) & 744.3725)

- Involuntary placement
- Experimental procedures
- Dissolution of marriage
- Parental rights
- Sterilization
- Abortion

Reporting Requirements (744.367, 744.3675 & 744.3678)

- Initial Reports (60 days)
 - Initial Plan
 - Verified Inventory

- Annual Reports (90 days from FYE)
 - Annual Plan
 - Annual Accounting
 - Simplified Accounting

Termination (744.521, 744.524)

- Death
- Restoration
- Resignation
- Age of Majority
- Unable to locate
- Assets exhausted
- Relocation
- Removal of Guardian

Discharge (744.527, 744.531)

Final Reports and Application for Discharge, Order of Discharge

Related Florida Statutes and Topics

393 – Developmental Disabilities
394 – Baker Act
397 – Marchman Act
415 – Adult Protective Services
709 – Powers of Attorney
765 – Health Care Advance Directives
744 Part VIII – Veterans’ Guardianship
744 Part II – Public and Professional Guardians

ABA PRACTICAL Tool

- Presume no guardianship
- Reason for concern
- Ask if temporary
- Community resources
- Team available to help
- Identify abilities
- Challenges for supportive decision making
- Appoint individual consistent with person’s values/preferences
- Limit guardianship proceedings

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