

## **Guardianship &** Guardian Advocacy







## **Workshop Overview**

- ☐ About the Clerk of the Circuit Court & Comptroller's Office
- ☐ Terms to Know
- Types of Guardians
- Who can be a Guardian
- Powers and Duties of a Guardian
- □ Alternatives to Guardianship
- ☐ Helpful Links
- □ Q & A

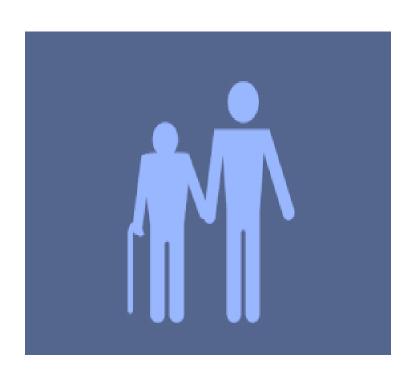


# Clerk of the Circuit Court & Comptroller's Self Service Center

- Clerk of the Circuit Court & Comptroller is the trustee of the county's public records and public funds.
- The Self-Service Center provides:
  - User-friendly forms/packets
  - Public access computers
  - Free Navigator Appointments for document completion assistance
  - Notary services and more
- Clerk of the Circuit Court & Comptroller's office can only provide ministerial assistance and cannot give legal advice.



## What is Guardianship?



- Guardianship is a legal proceeding where a guardian is appointed to exercise the legal rights of an incapacitated person.
- **F.S. 744.101**: Preference for the least restrictive form of guardianship.
  - Consideration must be given to the person's freedoms, choices, and liberties.
  - The intent of the law is to treat guardianship as a last alternative.

#### **General Terms to Know**

- Guardian: a person who has been appointed by the court to act on behalf of a ward's person or property or both.
- Ward: Person for whom a guardian has been appointed. May be:
  - Incapacitated: fully or partially
  - Minor
  - Developmentally disabled adult
- Incapacitated person: a person who has been judicially determined to lack the capacity to manage at least some of their property or meet at least some of their essential health and safety requirements.

## Terms to Know (cont'd)

- Capacity re property: ability to obtain, administer, dispose of real property, benefits, or income.
- Capacity re person: ability to manage health care, food, shelter, clothing, or personal hygiene.

<u>Note</u>: Petition for Guardianship must be filed along with or following a Petition to Determine Incapacity unless for Guardianship of a Minor or Guardian Advocate.



## **Types of Guardians**

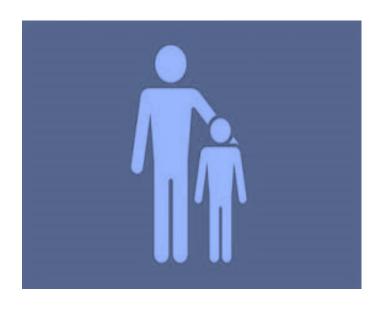


- Guardian of the Person
- Guardian of the Property
- Limited Guardian v. Plenary Guardian
- Guardian of a Minor
- Guardian Advocate
- Emergency Guardian
- Preneed Guardian
- Non-Professional, Professional, Public

#### **Limited Guardian**

- Ward has been found to be only partially incapacitated.
- Court order will specify the scope of your powers and responsibility.
- Oftentimes seen in the context of injury or physical incapacity with no mental limitations.
- If ward is totally incapacitated= plenary guardian.
- Ward may petition the court to have their capacity restored.

#### **Guardian of a Minor**



- No finding of incapacity required.
- "Of the person only" if minor needs someone to care for them (shelter, health care, school) because their parents are incapacitated or deceased, but they have no property (i.e: trust, inheritance)
- "Of the person and property" if minor has been left property or has source of income.
- Guardianship for settlement of a minor is limited to when minor is receiving a settlement or award from a lawsuit. Still in the care of parent(s).
  - Guardian can be a parent if settlement is for less than \$15,000.

#### **Guardian Advocate**

- Does not require judicial determination of incapacity. <u>Developmentally Disabled without Determination of Incapacity</u>: (F.S. 393.12) the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property due to a developmental disability such as autism, down syndrome, cerebral palsy.
- Can be less restrictive than a guardianship-more personal rights retained. The court must specifically state in the order what rights have been given to GA.
- Does not require representation by an attorney.
- Guardian training requirements often waived if GA is parent.

## **Emergency Temporary Guardian**

- If an alleged incapacitated person is in imminent danger, the Court may appoint an emergency temporary guardian (ETG) for up to 90 days.
  - The Court may extend the ETG's authority for an extra 90 days
- Court must find an imminent danger that the physical or mental health or safety of the person will be seriously impaired; OR
- The person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.



#### **Pre-Need Guardian**



- Someone named in a written declaration to serve as a guardian in the event of the incapacity of the declarant.
- **F.S. 744.3045**: Must be written, signed in the presence of two witnesses at the same time, signed by the witnesses, and filed with the clerk's office.
- No fee to file with clerk
- Creates a rebuttable presumption that preneed guardian should be guardian.
- Can be done for yourself or for your minor child(ren)

#### Non-Professional v. Professional

- Non-Professional guardian is a relative or friend who serves as a guardian for someone they know.
- A professional guardian has three or more wards that are not relatives.
   Can be private or public guardian.
- A public guardian may serve if there is no relative, friend, private guardian, bank or corp. willing and qualified to serve. Primarily serve wards of limited financial means.
- Professional and public guardians are regulated by the Office of Public & Professional Guardians within the Dept. of Elderly Affairs.

<u>Please Note</u>: Every non-lawyer guardian must be represented by a FL Attorney. (Fla. Prob. R. 5.030)



#### Who can be a Guardian?

- Any resident of the state of FL who is 18 years or older
- Any non-resident if he or she is:
  - Related by lineal consanguinity to the ward
  - Adoptive child or adoptive parent of the ward
  - A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or
  - The spouse of any person listed above.
- Visit F.S. 744.309 for the full list of who may serve as a guardian.



#### Who cannot serve as a Guardian?

- Convicted Felons
- Persons who suffer from an illness or incapacity
- Any person who was judicially determined to have committed abuse, abandonment, or neglect against a child
- Any person who has a conflict of interest with the ward
  - Exception: non-profit guardians or health care providers
- Visit F.S. 744.309(3) for a full list of who may NOT serve as a guardian.

## Requirements for Guardians

- Post a bond
- **Professional**: Receive a minimum of 40 hrs. of instruction & training and then a minimum of 16 hours of continuing education every 2 years.
- Non-Professional: Minimum 8 hours ct. approved course completed within 4 months of appointment
- Credit history check
- Level 2 background screening (regular fingerprint background check for non-professional)
- Court may waive some or all of these requirements for a non-professional guardian



#### Powers of a Guardian

Visit F.S. Chapter 744 Part VI for more information about the Powers of a Guardian

CIVIL RIGHTS	RIGHTS THAT CAN BE TAKEN BY A COURT AND DELEGATED TO A GUARDIAN	RIGHTS THAT CAN BE TAKEN BY A COURT AND NOT DELEGATED TO A GUARDIAN
Right to apply for government benefits	×	
Right to manage money and property	×	
Right to determine residence	Х	
Right to consent to medical and mental health treatment	Х	
Right to make decisions about social environment	Х	
Right to contract	×	
Right to sue and defend lawsuits	×	
Right to Marry		Х
Right to Vote		Х
Right to Apply for a Driver's License		Х
Right to Travel		Х
Right to Seek and Retain Employment		Х





#### **Duties of a Guardian**



- Manage the delegated rights of the ward in the best interest of the ward and, as much as possible, consistent with the preferences of the ward.
- Report on the management of the ward's person and/or property to the court:
  - > Initial Plan
  - Verified Inventory
  - Annual Plans
  - Annual Accountings
  - > Final Reports
- The Clerk's office is statutorily tasked with auditing the guardianship reports filed with the court.
- Inspector General's office handles higher level audits with fraud/misconduct concerns.



## Alternatives to Guardianship



- Supported Decision-Making
- Banking Services
- Power of Attorney
  - Durable Power of Attorney
- Health Care Advance Directives
- Medical Proxy
- Trusts
  - Revocable
  - Irrevocable
  - Special Needs



### **Helpful Resources**

- www.turning18.org website for parents of developmentally disabled teens. Information on options, assistance with guardian advocate forms.
- Department of Elder Affairs Fraud Hotline: 561-355-FRAUD (3728)
- www.mypalmbeachclerk.com -information regarding fees, locations, hours, and how to contact the clerk's guardianship division and/or inspector general's office.
- Link to Florida Statutes Chapter 744:
  <a href="http://www.leg.state.fl.us/STATUTES/index.cfm?App\_mode=Display\_Statute&URL=0700-0799/0744/0744ContentsIndex.html&StatuteYear=2018&Title=-%3E2018-%3EChapter%20744">http://www.leg.state.fl.us/STATUTES/index.cfm?App\_mode=Display\_Statute&URL=0700-0799/0744/0744ContentsIndex.html&StatuteYear=2018&Title=-%3E2018-%3EChapter%20744</a>
- https://www.stetson.edu/law/wings/ stakeholders website with dozens of resources for non-professional, professional guardians, and loved ones.





**QUESTIONS?** 











## **Thank You**







