



JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER
PALM BEACH COUNTY

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.

Note: 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.
Developmentally Disabled without Determination of Incapacity: (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.

Please Note: 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	X	
Right to manage money and property	X	
Right to determine residence	X	
Right to consent to medical and mental health treatment	X	
Right to make decisions about social environment	X	
Right to contract	X	
Right to sue and defend lawsuits	X	
Right to Marry		X
Right to Vote		X
Right to Apply for a Driver's License		X
Right to Travel		X
Right to Seek and Retain Employment		X

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:
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
- <https://www.stetson.edu/law/wings/> : Florida Court’s guardianship stakeholders website with dozens of resources for non-professional, professional guardians, and loved ones.



JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER
PALM BEACH COUNTY



QUESTIONS?





JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER
PALM BEACH COUNTY

Thank You

