GUARDIAN ADVOCATE INFORMATION

For Persons with a Developmental Disability

What is a Guardian Advocate?

Often a Guardian Advocate needs to be appointed when a person with a developmental disability turns 18 years old. Upon becoming an adult, the parent no longer has the legal ability to make decisions for them. To qualify under Florida Statutes, the person with a developmental disability must have a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Guardian Advocacy is a process for families, caregivers, and friends of individuals with a developmental disability to obtain a guardianship without declaring the individual incompetent. Guardian Advocate appointments are governed by Florida Statute Section 393.12. The appointment of a Guardian Advocate allows the guardian to make decisions for the person with a developmental disability. Not everyone with a developmental disability needs a legal guardian. One is necessary if the person lacks the decision-making ability to make necessary decisions relating to daily life. During any Guardian Advocate proceedings the Court will appoint an attorney for the person with a developmental disability to ensure their best interest is protected.

The Guardian Advocate is responsible for only those duties approved by the Judge and listed in the Court Order. The process of becoming a Guardian Advocate of the person does not require the hiring of an attorney. If there is property involved, other than social security benefits or other government payee programs, the person

seeking to become a Guardian Advocate of the person and the property must hire an attorney. These property rights include, but are not limited to: a pending law suit, estate matter, or other income or property right coming to the person with a developmental disability. The Court can expand the description of property rights by Petition and Order.

Background Check & Credit History Investigation Requirements:

Florida Statute section 744.3135 allows the court to require a non-professional Guardian Advocate to submit, at their own expense, to an investigation of the Guardian Advocate's credit history and to a level 2 background screening prior to being appointed to serve as Guardian Advocate. Online services offer credit history reports. The Guardian Advocate must contact the Clerk of Court to obtain a fingerprinting form for the background screening. The Guardian Advocate may be fingerprinted by any of the vendors approved by the Florida Department of Law Enforcement. A list of vendors can be found at https://www.fdle.state.fl.us/cms/Criminal-HistoryRecords/Documents/ApplicantLivescanService-ProvidersVendors.aspx The cost for the Alachua County Sheriff's office is approximately $46.00. If the guardian cannot afford the cost of the fingerprinting, the guardian may file a motion to be reimbursed for the cost of the fingerprinting and an affidavit of indigence that reflects the guardian's finances. The background check and credit history investigation must be completed before a hearing for appointment as Guardian Advocate can be scheduled.

The Step-by-Step Process of Becoming a Guardian Advocate:

1. Complete Necessary Paperwork.

A. Application for Appointment as Guardian Advocate.

B. Application for Appointment as Standby Guardian Advocate.

C. Joinder signed by the proposed Standby Guardian Advocate.

D. Petition for Appointment of Guardian Advocate of the person.

E. Oath of Guardian Advocate, Designation & Acceptance.

F. Guardian Education Requirement Acknowledgment.

G. Submit background screening and credit history investigation.

2. File all Paperwork with Clerk's Office.

A. The person filing the paperwork is called the Petitioner.

B. The Petitioner should attach a copy of the medical records of the person with a developmental disability to the Petition for Appointment of Guardian Advocate.

C. Petitioner must pay the required filing fees. If the person with developmental disabilities is indigent, the Petitioner should complete an Application for Determination of Indigence, which is available at the Clerk's Office. If the Clerk determines that the person with developmental disabilities is indigent, the Clerk may waive the filing fee and the person may be entitled to receive services of an attorney ad litem without cost. The Application requires information concerning the person with developmental disabilities' income, assets and debts.

3. The Petitioner should contact the Court to set a hearing date and send notice to parties that the petition was filed and the date and time of the hearing.

4. Hearing.

A. Attend with the person with a developmental disability if they are able to travel.

Detailed Process for Appointment of a Guardian Advocate(s):

First: Complete all the necessary paperwork.

Application for Appointment as Guardian Advocate(s):

This includes basic information about the person requesting to be appointed Guardian Advocate(s) of the person with developmental disabilities.

Application for Appointment as Standby Guardian Advocate:

Application and appointment of Standby Guardian is optional. If a Standby Guardian Advocate is appointed they will not take any action for the benefit of the person with a developmental disability until the appointed Guardian Advocate is unable to perform their duties either because of death, removal, resignation, or adjudication of incompetency. The proposed Standby Guardian Advocate must sign a Joinder, and file it with the Petition for Appointment of Guardian Advocate and the Application of Standby Guardian Advocate.

Petition for Appointment of Guardian Advocate(s):

The Petition **must** state the following:

A. Name, age, present address of individual filing petition and his or her relationship to the person with developmental disability

B. Name, age, county of residence, and present address of the person with a developmental disability

C. State why the person filing petition feels a Guardian Advocate is necessary

D. Include specific factual information

E. State specific areas where the person lacks decision-making ability

F. Specify the person's legal disabilities as defined in Florida Statute section 744.3215(3)

G. Specify the nature of the person's disability as defined in Florida Statute 393.063(12)

H. State name of proposed Guardian Advocate(s), relationship to the person with a development disability

I. Also, state any relationship the proposed Guardian Advocate(s) has or had with provider of health services, residential services, or other services to the person with a developmental disability

J. Pursuant to Probate Rule 5.649(a) (8) the petition must state whether the petitioner has knowledge, information, or belief that the person with a developmental disability has created an advanced directive, or a durable power of attorney.

K. Complete and sign the Guardian Education Requirement Acknowledgment form. This form confirms the petitioner is aware of the education requirement.

OATH OF GUARDIAN, DESIGNATION OF RESIDENT AGENT

The guardian shall file an oath to faithfully perform the duties of guardian. On the form, the guardian should sign as the "Affiant," because the guardian is the person affirming that the statements in the oath are true. The guardian shall also designate a resident agent, who is a person other than the guardian who agrees to

accept service of process or notice in the event the Court is unable to locate or send notice to the guardian. The resident agent may be either a lawyer who is a member of The Florida Bar or a non-lawyer. If the resident agent is a non-lawyer, the resident agent must be a resident of the county where the guardianship is filed. If the resident agent is a lawyer, the lawyer may be a resident of any county of Florida. The resident agent may be a family member or friend who resides at the same address as the guardian. The resident agent must sign the Acceptance on the bottom of the form. The guardian and resident agent have a continuing duty to provide the court with their current address. Finally, the form must be notarized.

Second: File all paperwork with the Clerk's Office. Always submit the original document. You may file by mailing in the documents to:
Clerk of the Court, Guardianship Department, 201 E. University Ave., Gainesville, Florida 32601
You may file the documents in person at the Clerk's Office located on the first floor of the Alachua Family/Civil Justice Center.

Filing Fees:

Guardian Advocate of Person only: $235.00

Guardianship (Person and Property): $400.00

(Fees are subject to change)

Upon filing the Petition for Appointment of a Guardian Advocate(s)

A. The Court will appoint an attorney to represent the person with a developmental disability.

THIRD: Hearing.

Once all the necessary documents are filed with the Court a case number is assigned and a Judge will be assigned. The Petitioner may call the Judge's Judicial Assistant to set the hearing date and time. The facts of the petition will be presented to the Judge. The Judge will make a decision whether or not to appoint a Guardian Advocate. The person with a developmental disability has the right to be present at the hearing.

At the hearing the Judge may issue an Order Appointing Guardian Advocate of the Person. Also, the Judge may issue Letters of Guardian Advocate.

Upon Appointment of a Guardian Advocate:

If the Judge decides the person with a developmental disability is in need of a Guardian Advocate the Judge will enter an Order Appointing a Guardian Advocate and issue Letters of Guardian Advocate of the Person. The Order will contain the powers, duties, and responsibilities of the Guardian Advocate. The Guardian Advocate may obtain certified copies of the Order and Letters at the Clerk's office for a fee.
The person with a developmental disability retains all legal rights except those which the Court gives to the Guardian Advocate.

Requirements for Guardian Advocates after Court Appointment:

Education Requirement

Florida Statutes 393.12(10) and 744.3145 requires every person appointed as a Guardian Advocate to complete educational training. Once a person is appointed by the Court to be the Guardian Advocate they must complete the required training within four months of his or her appointment.

A. Each person appointed a Guardian Advocate must complete a

minimum of 8 hours of instruction and training.

An approved course on guardianship education is available through the Florida Guardians website - https://www.floridaguardians.com/education/guardianship-training/

If the guardian cannot afford to pay for the course, the guardian may file a motion to reduce or waive the cost of the course and an affidavit of indigence that reflects the guardian's finances. If the ward is a resident at Tacachale, the guardian may take the course offered by Tacachale. After viewing the course, the guardian shall file the certificate of completion with the Court.

Required Filings with Court after Appointment

Guardians are required to file certain periodic reports with the Court. Failure to comply with any of the reporting requirements may require appearance before the Court and fines, removal, or other actions may be taken against the Guardian Advocate.

Required Plans

Initial Plan:

Must be filed within 60 days of appointment as Guardian Advocate and must include the following:

A. Statement of medical, mental, or personal care services for the welfare of the ward

B. Statement of social and personal services for the welfare of the ward

C. The place and kind of residential setting best suited for the needs of the ward

D. The application of health and accident insurance and any other

private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward; and

E. Any physical and mental examinations necessary to determine the ward's medical and mental health treatment needs.

Annual Plan:

Must be filed within 90 days from the anniversary date of appointment as Guardian Advocate

Report must include:

Information concerning the residence of the ward, including:

A. The ward's address at the time of filing the plan.

B. The name and address of each place where the ward was maintained during the preceding year.

C. The length of stay of the ward at each place.

D. A statement of whether the current residential setting is best suited for the current needs of the ward.

E. Plans for ensuring during the coming year that the ward is in the best residential setting to meet his or her needs.

F. Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the ward, including:

i. A resume of any professional medical treatment given to the ward during the preceding year.

ii. A report of a physician who has examined the ward within the last 90 days before the reporting period. The report must contain an evaluation of the ward's

condition and a statement of the current level of capacity of the ward.

iii. The plan for providing medical, mental health, and rehabilitative services in the coming year.

G. Information concerning the social condition of the ward, including:

i. The social and personal services currently used by the ward.

ii. The social skills of the ward, including a statement of how well the ward communicates and maintains interpersonal relationships.

iii. The social needs of the ward.

H. Each plan must address the issue of restoration of rights to the ward and include:

i. A summary of activities during the preceding year that were designed to enhance the capacity of the ward.

ii. A statement of whether the ward can have any rights restored.

iii. A statement of whether restoration of any rights will be sought.

Restoration of Rights:

Any interested person, including the person with a developmental disability, may file a suggestion of restoration of rights with the Court. This must state the person with a developmental disability is currently capable of exercising some or all of the rights given to the Guardian Advocate. Meaning the person is no longer in need of

a Guardian Advocate. Some evidentiary support must be included in the filing of the suggestion. Such evidentiary support includes: a signed statement from a medical, psychological, or psychiatric doctor whom has evaluated the person with a developmental disability. If no evidentiary support can be accessed then the petitioner may state a good faith basis for suggestion. The Court shall immediately set a hearing.

FORMS ATTACHED TO GUARDIAN ADVOCATE INFORMATION

A. Application For Appointment As Guardian Advocate

B. Application For Appointment As Standby Guardian Advocate

C. Standby Guardian's Joinder In Petition

D. Petition for Appointment of Guardian Advocate Of The Person Only

E. Oath of Guardian Advocate, Designation Of Resident Agent & Acceptance

F. Initial Plan of Guardian Advocate of the Person

G. Joint Stipulation for Appointment of Guardian Advocate and Standby Guardian Advocate

H. Annual Plan

I. Guardian Education Requirements Acknowledgment