



Our Mission to support vulnerable individuals who need help with life management due to age, disability or family circumstance.

THE REMOVABLE RIGHTS

Personal Rights

1. The right to marry
2. The right to vote
3. The right to *personally* apply for government benefits
4. The right to have a driver's license
5. The right to travel
6. The right to seek & retain employment

Delegable Rights

7. The right to contract
8. The right to sue and/or defend lawsuits
9. The right to apply for government benefits
10. The right to manage property or to make any gift or disposition of property
11. The right to determine residence
12. The right to consent to medical treatment
13. The right to make decisions about social environment or other social aspects of life

DUTIES OF A GUARDIAN

The guardian must file two initial reports within 60 days of appointment;

1. The Initial Plan – a statement of services you plan to obtain and render to the ward, where you plan to have ward reside, how often you plan to visit, etc.
2. The Verified Inventory – a listing of all assets with back-up documentation (i.e.: bank and brokerage statements, statement of property value, appraisal of personal property) as well as an itemization of all regular income to be received

The guardian must also file two annual reports within 90 days of the end of the accounting period;

1. Annual Accounting - itemizing all receipts and disbursements, as well as any increase or decrease in value of retained assets that occurred over the previous year. This accounting must balance to the penny.
2. Annual Plan - an update to the initial plan. The annual guardianship plan must be accompanied by a written mental and medical evaluation from the ward's physician. It must also state whether the ward is eligible to have any rights restored.

TYPES OF GUARDIANSHIPS

Natural – Parent of a minor child

Pre-Need Guardian – Determined by a competent adult in the event guardianship is needed

Standby – Court appointed in advance to take over from current guardian

Voluntary – Property only – physician must attest to the individual's competency

Limited – Ward retains some but not all rights

Plenary – Ward has all rights removed

Emergency Temporary Guardian (ETG) – Only lasts for 60 days (but can be extended)

THE DETERMINATION OF INCAPACITY PROCESS IN FLORIDA

- ◆ Takes approximately sixty days
- ◆ Attorney drafts and files with the circuit court several legal documents (Petition to Determine Capacity, Petition to Appoint Guardian)
- ◆ Petitions are "served" to the Alleged Incapacitated Person (AIP)
- ◆ Court appoints an attorney to represent the AIP who visits the AIP at least once
- ◆ Court appoints an "examining committee" comprised of a physician, a psychologist or a gerontologist, and a "lay person" to do an independent evaluation of the AIP
- ◆ Examining committee files written reports to the court. Some court-appointed attorneys will also file written reports to the court.
- ◆ Incapacity hearing is scheduled within 14 days from the court's receipt of the final committee member's report.
- ◆ Hearing is held where a judge (or a hearing officer) will decide if the AIP is incapacitated and whether there is a less restrictive alternative to a guardianship (such as a Power of Attorney, Trust or Healthcare Surrogate.)
- ◆ Should the AIP require a guardian, then a finding as to what rights will be removed will be made as well
- ◆ If more than one individual wants to be the guardian, another hearing may be scheduled to decide who shall be appointed.

GUARDIANSHIP ALTERNATIVES

FOR CARE OF THE PERSON

Designation of Health Care Surrogate – allows a specified individual to make medical decisions for an incapacitated person without additional legal intervention.

Living Will – allows the individual's primary care physician to withhold or withdraw life support, but only in the event the individual has been diagnosed with a terminal illness and has less than six months to live.

Health Care Proxy – can be appointed to make medical decisions during a single episode of incapacity.

Guardian Advocate (Baker Act) – appointed to make medical decisions for an individual during a Baker Act proceeding. This IS a legal proceeding, but is terminated upon the individual's recovery from the psychiatric episode.

Guardian Advocate (Developmental Disabilities) – appointed for a Developmentally Disabled individual through an appointment proceeding as fully described in F.S. §393.12. This proceeding should be used exclusively for higher-functioning individuals to allow a third party to make some decisions for the person with limited capacity. It IS a legal proceeding, but not as intrusive or demeaning as a F.S. §744 proceeding.

FOR CARE OF THE PROPERTY

Durable Power of Attorney – a legal document (executed by the individual PRIOR TO incapacity), which appoints another individual to act in their stead regarding financial matters. There are many types of DPOAs, some include healthcare matters, others become effective only upon the person's incapacity.

Trust Agreement – can be either revocable or irrevocable, can have the same person as both the trustee and the beneficiary or different individuals, can name the trustee and/or the beneficiary as an individual or a corporation. Many trusts allow the incapacity of the trustee to be determined by two physicians, letting the successor trustee (designated in the document) to take over management of the trust without court involvement.

Appointment of a Representative Payee to manage an individual's periodic income (Social Security, Veteran's or Civil Service Pensions or Annuities) can sometimes avoid further legal interference.

Joint Tenants With Rights Of Survivorship (JTWROS) accounts are a rudimentary form of avoiding court intrusion. This will only serve the incapacitated person if ALL property is titled this way, and, generally speaking, should be titled with the same person on all properties. In Trust For (ITF), Pay On Death (POD) and Joint Tenants in Common (JTC) will NOT help in the case of incapacity, only in the actual death of the individual.

CARE MANAGEMENT/DAILY MONEY MANAGEMENT

If the individual lacks capacity but there is involved, empowered and non-conflicted family that has access to the property of the individual, perhaps a guardianship may be avoided with the assistance of a care manager.

If there is a Trustee and a primary care physician that is comfortable with the healthcare management of the incapacitated individual without legal oversight, then care management may also be an alternative.

If the client has capacity but is unable to navigate the complex healthcare, financial and social services arena, then care management and/or daily money management is often a terrific way to avoid guardianship. Strong advance directives must be in place to make this a successful long-term option.