



Presented by:

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Agenda

- ❖ Differences between Guardianship and Guardian Advocacy
- ❖ Guardianship Overview
- ❖ Guardian Advocacy Overview
- ❖ The Process of Guardian Advocacy
- ❖ What Happens in the Courtroom?
- ❖ Next steps

Guardianship or Guardian Advocacy?

GUARDIANSHIP	GUARDIAN ADVOCACY
Incapacity for any reason (i.e., Alzheimer's, auto accident, minor child) (Chapter 744)	Developmental Disability (Ch. 393)
Person and/or Property	Person and/or Property (if property, attorney)
Any or all rights can be taken away	Only certain rights taken away (not all)
Guardian <u>must</u> be represented by an attorney	Guardian Advocate of the person <u>only</u> does not have to be represented by an attorney
<u>Determination of incapacity</u> of Protected Person	Letter from Treating physician that Protected Person has Developmental Disability identified prior to the age of eighteen (18)

Guardianship

1. Some triggering events that require a guardianship to be established: i.e., dementia/Alzheimer's disease, mental health, accident, minority)
2. Rights that can be taken away in a Guardianship:
 - to personally apply for government benefits
 - to contract
 - to sue and defend lawsuits
 - to manage property or to make any gift or disposition of property
 - to determine [his/her] residency
 - to consent to medical and mental health treatment
 - to make decisions about [his/her] social environment or other social aspects of life
 - to marry
 - to vote
 - to travel
 - to have a driver's license
 - to seek or retain employment
3. Examining committee
4. Attorney ad Litem/Elisor
5. Difference in costs between Guardianship/Guardian Advocacy (establishment and annual expenses)
6. Time difference: 60 days for establishment

Guardian Advocacy

2016 Florida Statutes Title XXIX Chapter 393 DEVELOPMENTAL DISABILITIES PUBLIC HEALTH

393.12 Capacity; appointment of guardian advocate.—

(1) CAPACITY.—

(a) A person with a developmental disability may not be presumed incapacitated solely by reason of his or her acceptance in nonresidential services or admission to residential care and may not be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States.

(b) The determination of incapacity of a person with a developmental disability and the appointment of a guardian must be conducted in a separate proceeding according to the procedures and requirements of chapter 744 and the Florida Probate Rules.

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(a) A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities, if 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 or if the person has voluntarily petitioned for the appointment of a guardian advocate. Except as otherwise specified, the proceeding shall be governed by the Florida Rules of Probate Procedure.

Guardian Advocacy cont.

- Developmental Disability manifested prior to the age of eighteen (18)
- List set forth in Ch. 393 of the Florida Statutes:
 - Autism, Asperger
 - Cerebral Palsy
 - Down syndrome
 - Phelan-McDermid syndrome
 - Prader-Willi syndrome
 - Spina Bifida
- Rights that can be taken away in a Guardian Advocacy of the person (no attorney)
 - to determine residence;
 - to consent to medical, dental, and surgical care and treatment;
 - to make decisions about the social environment or other social aspects of the person with a developmental disability's life;
 - to act as representative payee of government benefits or to seek such benefits.

Similarities between Guardianship and Guardian Advocacy

- **Court system:** *Do I really have to go to court? I'm his mom/dad/family.*
- **Attorney for Protected Person:** *Like in a criminal case?*
- **Application?** *I have to apply? Invasive with 10-year history.*
- **Criminal and credit check:** *What if I????*
- **Guardianship education class:** *I have to go where for what?*
- **Annual filings:** *Will this never end?*
- **Rights can be restored:** *As they grow and mature, can we make this go away?*

Next Steps

Determine whether guardianship or guardian advocacy is right for your family

- If Guardianship is best, then select an attorney to assist you
- If Guardian Advocacy is best for your family, consider the following:
 - Can I work through the process on my own using the materials available including the step by step guide?
 - Do I need an attorney to review my paperwork before submitting it to the clerk of the courts?
 - Do I need an attorney to prepare my paperwork and guide me through the process but I can do the rest on my own?
 - Do I need an attorney to handle the entire process for my family?

Resources

Seminole/Brevard counties: http://flcourts18.org/?page_id=215 Click on Guardian Advocate Manual and Forms

All other counties: www.cedaveylaw.com Click on “What We Do” (Guardian Advocacy) for the Guardian Advocacy Guide and Forms

Contact Us



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Glossary of Terms-Guardian Advocacy

Capacity: A person’s ability to manage their property and meet the essential requirements for their health care, food, shelter, clothing, personal hygiene, and safety.

Estate: All that one owns in real estate and other assets.

Guardianship: The court process where an individual is determined to be incapacitated, their rights are removed and delegated to another person, the “Guardian,” who is appointed to act for and on behalf of the incapacitated person.

Guardian Advocacy: A process under §393.12 of the Florida Statutes for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf.

Incapacity: A person’s inability to manage their property and meet the essential requirements for their health care, food, shelter, clothing, personal hygiene, and safety.

Indigent: A person falling below an income and asset level set by the state. When a person is determined indigent by state standards, the clerk of the court can declare said person indigent and may waive court filing and other fees related to legal matters.

Special Needs Trust: Special needs trusts are created for the (usually sole) benefit of disabled beneficiaries to allow them a better quality of life while allowing them to remain on or be eligible for government benefits in the future. The trust is drafted with the specific needs, lifestyle, and future of the beneficiary in mind. There are several types with different rules for each type.

Ward: A person who has a guardian appointed by the court to care for and take responsibility for that person.

Notes:
