

Guardianship and Guardian Advocacy

Guardianship and Guardian Advocacy are **legal relationships** between guardians and wards (the subject of the guardianship or guardian advocacy), created by order of a court with proper jurisdiction. In Florida, the Probate Court has exclusive jurisdiction over the appointment of guardians for minors, incapacitated adults and developmentally disabled adults under guardian advocacy. Individuals or corporations wishing to serve as guardians and guardian advocates (see Florida Statute 393.12) are subject to the same powers, duties and responsibilities delineated in Florida Statutes chapter 744 or those defined by court order under s.744.

A guardianship may be created for the person of the ward, for the property of the ward or for both. Guardianship of the person of a minor child does differ from custody of a minor. The Probate Court is without authority to grant guardianship of the person of a minor child with a living parent to anyone other than the parent(s) without the consent of or without giving notice to each living parent. The guardian of the person need not be the same person as the guardian of the property, although one person may certainly serve as both. There may be two or more guardians, who would be referred to as co-guardians.

According to the Florida Rules of Court Probate Rule 5.030, to obtain guardianship of a minor or of an adult suffering from the infirmities of aging or other person who has reached the age of majority, you must hire an attorney—guardian advocacy under Florida Statute 393.12 pertaining to the developmentally disabled is the exception to this rule. For a minor, the attorney will file a petition and an application on behalf of the proposed guardian. In the case of an adult, the attorney will file a Petition for Incapacity explaining the supposed incapacity and an Application for Appointment as Guardian on behalf of the person wanting to become the guardian. Once the Petition for Incapacity is filed, the Court will appoint an attorney to meet with and protect the rights of the alleged incapacitated person. The Court will also appoint three Examining Committee members to assess the proposed incapacitated person and submit a written report delineating the alleged incapacitated person's abilities.

In the Ninth Judicial Circuit, before the guardianship matter can be heard, all proposed guardians and guardian advocates must undergo a Level Two Live Scan Background screening (Live scan provider information can be found at <http://www.ninthcircuit.org/research/court-forms/probate>) to determine if the applicant has a disqualifying history or undisclosed criminal history. The results background screening must come directly from the Florida Department of Law Enforcement and Federal Bureau of Investigation to the ORI (FL048094Z) designated for family guardians. If a disqualifying conviction or withhold of adjudication or an adjudication of dependency is revealed, the attorney or proposed guardian advocate will receive a letter explaining that there is a disqualifying event. Florida Statute 744.309(3) states, “No person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guardian. Further, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in s. [39.01](#) or s. [984.03](#)(1), (2), and (37), or who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. [435.04](#) or similar statute of another jurisdiction, shall be appointed to act as a guardian.”

The court monitor completes a credit check on all applicants desiring appointment as Guardian of the Property in the Ninth Judicial Circuit. If a proposed guardian’s credit history reveals no credit concerns, a document stating there are no problems is placed in the Court file. However, if the applicant has questionable credit he or she is asked to explain, in writing, the reasons for the impaired credit. After receiving the explanation, a document explaining the proposed guardian’s credit is filed along with the proposed guardian’s statement.

Under Florida Statute 393.12, a person desiring to become the guardian advocate of a person with a developmental disability is not required to retain the services of an attorney. However, a person with a developmental disability may not be presumed to be incapacitated simply because he or she receives residential services. A person wishing to become

guardian advocate of a developmentally disabled person who is able to understand some, but not all, of his/her rights must file the appropriate petition and application (all guardian advocacy forms and instructions are available for viewing and downloading at <http://www.ninthcircuit.org/research/court-forms/probate-guardian-advocate>), along with documentation, e.g. IEP's, Psychological Evaluations and medical records.

Just as an attorney is appointed for an alleged incapacitated person, the Court will appoint an attorney to represent the proposed ward in a guardian advocacy.

Alleged incapacitated persons and developmentally disabled persons must be present at the adjudicatory hearing unless he or she doesn't care to attend, or the alleged ward's attorney waives attendance or unless good cause can be shown why the person shouldn't be in attendance.

Within sixty days of the date of Letters of Guardianship, the guardian/guardian advocate for the person must file an Initial Plan and Proof of Service of Initial Plan. If the guardian is also Guardian of the Property, he or she must also file an Inventory listing all of the ward's property (real and personal). Annual Plans, along with a Physician's Report, must be filed annually for those who are Guardians of the Person. Those acting as Guardians of the Property must also file Annual Accountings.

After a guardian/guardian advocate is appointed, he or she has four months to attend the circuit approved family guardianship course. In the Ninth Judicial Circuit, Seniors First (407-297-9980), which is located at 5395 L.B. McLeod Road, Orlando, Florida 32811, teaches the only approved family guardian class.

Guardians and guardian advocates are appointed to protect the ward and his or her property, as well as to advocate for the ward. Wards retain the right to be treated humanely, respectfully and with dignity. They also have the right to have visitors, to be free from discrimination, to be educated, receive services, privacy, and to be as independent as possible.

Finally, as guardians and guardian advocates you have a duty to file a Suggestion of Capacity if your ward makes gains in the ability to exercise any of the rights that were removed from him or her.