

THE SKETCHLEY LAW FIRM, P.A.

Providing Compassionate Support & Guidance Through Elder Law & Guardianship

GUARDIANSHIP

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In Florida, a GUARDIAN refers to the person or entity appointed by a court to make decisions on behalf of an individual determined by the court to lack capacity.

A guardianship over an incapacitated adult begins when a Petition to Determine Incapacity is filed against the adult alleged to be incapacitated. Any interested person can file the petition, which states facts suggesting incapacity and asks the court to evaluate the individual's capacity.

Upon filing the Petition to Determine Incapacity, the court appoints an attorney to represent the alleged incapacitated person. That attorney represents the individual and protects her rights.

If an emergency exists the Court, after the filing of the Petition to Determine Incapacity, can appoint an Emergency Temporary Guardian to make decisions regarding the emergency while a capacity determination is made.

The Court also appoints an examining committee to evaluate the individual's capacity. The committee consists of three neutral professionals. The committee meets with the individual and files a report with the Court regarding capacity.

While capacity is being determined, an appropriate guardian is sought. A Petition to Appoint a Guardian is filed, frequently by the same individual who files the Petition to Determine Incapacity. The petition asks the Court to appoint a specific individual or entity to serve as guardian. An individual seeking to be appointed guardian must file an application or be a Registered Professional Guardian in Florida, and is

subjected to a financial and criminal background check.

After the examining committee report is filed, the Court holds a hearing to determine the individual's capacity. Generally, at that same hearing the Court appoints a guardian to make decisions for the incapacitated individual. If an individual has been appointed GUARDIAN, the Court will issue Letters of Guardianship showing that the GUARDIAN has authority to act.

Family members and friends are frequently appointed as guardians. However, if the individual has assets and income, she can also be served by a professional guardian, paid from the individual's assets and income. If the individual is indigent, she may qualify for the services of the public guardian. The public guardian is funded by the community, and the services are provided free or at low costs to the indigent individual, if services are available.

Guardians are court-supervised from the date of appointment and are obligated to file periodic reports with the Court regarding the individual's status. In addition, the guardian may need court approval to make certain decisions.

If you would like one of our attorneys to come and speak to your group or organization about this topic, please contact Tracy Powell at (850) 894-0152. Past newsletters can be found at www.sketchleylaw.com.