

THE SKETCHLEY LAW FIRM, P.A.

Providing Compassionate Support & Guidance Through Elder Law & Guardianship

NATIONAL GUARDIANSHIP MONTH

October 2007

October is “National Guardianship Month,” which recognizes the hard work of guardians - professionals, family members, and volunteers who devote themselves to protecting those who cannot protect themselves. 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.

Guardianship plays an important role in Florida given its diverse population. Florida has one of the most comprehensive and protective guardianship laws in the country. Nonetheless, many Floridians have many misconceptions about guardianship proceedings. Some common myths include:

MYTH #1: Only family members can start the guardianship process.

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.

MYTH #2: Unscrupulous people can use the court system and have you adjudicated incapacitated, then take over your assets to use as they please.

When a Petition to Determine Incapacity has been filed against a person, he or she has rights. The court immediately appoints an attorney to represent the alleged incapacitated person. That attorney represents the individual and protects his or her rights. The alleged incapacitated person

has due process rights, including the rights to notice of and participation in the proceeding.

If a Guardian is appointed, the Guardian is court-supervised from the date of appointment and obligated to file periodic reports with the Court regarding the individual’s status and finances. These are subject to audits. In addition, the guardian may need court approval to make certain decisions. If a guardian is not fulfilling his/her duties, the guardian can be removed.

MYTH #3: Only family members can be guardians.

Family and friends are frequently appointed as guardians. However, if the individual has assets and income, he or 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 if funds are available.

MYTH #4: There is no way to prevent a guardianship proceeding.

In many circumstances, if proper planning is done in advance of incapacity, the costs and strain of a guardianship proceeding can be avoided. It is important to speak with a qualified elder law attorney to determine if such tools are available.

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.