

Guardianship & Guardian Advocacy

This session will share a brief overview of Guardianship and Guardian Advocacy. The presentation will include a definition of terms, an understanding of the differences, and the knowledge of when they are needed.

Presented by



Attorney Ed Spinks



Ed Spinks, attorney at Florida Elder Law & Legacy Planning, and has been practicing law in the area of estate planning, elder law, and special needs for over 20 years.

Memberships:

- Florida & Hawaii Bar Associations
- National and Florida Associations of Elder Law Attorneys
- Elder Counsel / Wealth Counsel
- Veterans of Foreign Wars (VFW) and American Legion

ELDER LAW



Florida Guardianship



Traditional Guardianship Process

Guardianship is the process designed to protect and exercise the legal rights of individuals whose functional limitations prevent them from being able to make their own decisions and have not made plans for this time in their lives.

People who need guardianship may have dementia, a developmental disability, chronic illness or other such conditions that generally cause functional limitations.

Before a guardianship is established, it must be determined that the alleged incapacitated person (AIP) lacks capacity. Guardianship should be the last resort.

Who Can be a Guardian

Any adult who is a resident of Florida

A nonresident of Florida if related

The court may appoint a professional guardian

CANNOT be guardian if they have been convicted of a felony, committed abuse, abandonment or neglect against a child, or may be unable to perform his or her duties due to illness or incapacity.



Path to Guardianship



Hearing
(Attorney Required)

Background &
Credit Reports

Attorney for
Ward

Examining
Committee

Petition for
Incapacity &
Guardianship

Florida Guardian Advocacy

Guardian Advocacy for a Person with Developmental Disabilities (Fla Ch. 393)



Generally the difference between guardian advocacy and guardianship in Florida, is the process to gain the authority.

For guardian advocacy under 393.12, F.S., the process does not include an adjudication of incapacity. However, the duties and responsibilities are identical for guardian advocates under this chapter and guardians appointed under Chapter 744.361 – .462.

Guardian Advocacy for a Person with Developmental Disabilities (Fla Ch. 393)



Upon reaching 18 years old in Florida, a child becomes an adult and the parent no longer has the legal ability to make decisions for them.

Guardian Advocacy is a process for families, caregivers, and friends of individuals with a developmental disability to obtain a guardianship without declaring the individual incompetent.

Guardian Advocacy for a Person with Developmental Disabilities (Fla Ch. 393)



1. Steps to become a Guardian Advocate
2. Complete Required Paperwork – Application / Oath
3. File with Clerk’s Office – pay required fees
4. Submit Background and Credit Reports (*No Felony Convictions*) and Medical Report
5. Schedule Hearing

Guardian Advocacy 13th Judicial Circuit Hillsborough County



Guardian Advocacy Forms

<https://www.fljud13.org/Portals/0/Forms/pdfs/GA%20Forms%20packet.pdf?ver=2017-08-23-105952-317>



*Guardianship is NOT the same as
Power of Attorney*



Durable Financial Power of Attorney

- Allows your agent to handle financial matters for you right away
- You can act on your own behalf if you are able
- You can remove the person acting as your agent if they do something you do not like

Medical Power of Attorney / Surrogate

- Allows you to appoint a trusted person to make medical decisions when you cannot
- Without this document, a court will choose someone for you



Supported Decision Making

- **Similar to power of attorney**
- **Only provide guidance NOT decision making**
- **Child can ultimately do what they want or are influenced to do.**





Questions



813-651-1233



- Visit www.FLElderLawLegacy.com to learn more and schedule an in-person or virtual appointment.
- Speak with Tina to schedule a consultation (live, in-person or virtual format).

FL Elder Law & Legacy
813-651-1233



