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GUARDIANSHIP GUIDEBOOK



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What is Guardianship?

Guardianship is a legal relationship whereby the New Jersey Superior Court gives one person (the guardian) the power to make personal and financial decisions for another (the ward). A guardian may be appointed when the court determines that an individual is unable to care for themselves and their estate by reason of mental illness or incapacity. One person may be a guardian over the ward's person and finances, or this responsibility may be split between two people.

When is a Guardian Appropriate?

Guardianship is appropriate when impaired judgment or capacity poses a major threat to a person's welfare. Often, the inability to access finances or arrange nursing home care necessitates a guardianship. Medical evaluations by two licensed physicians are necessary to establish the proposed ward's condition. However, only a court can determine the need for a guardian.

How Can I Become a Guardian?

Assuming that two physicians are prepared to attest to the proposed ward's incompetence, a petition must be filed with the court, requesting the appointment of a guardian. The ward's heirs and any other interested or affected parties must receive notice of the filing of the petition for guardianship. The order for

hearing is the document in which the judge sets forth the hearing date to determine if the petitioner will be named as guardian over the ward, sets a date by which anyone wishing to object must do so, and appoints an independent attorney to represent the interests of the alleged mentally incapacitated individual. A bond is often required when a guardian must manage the ward's finances and this may be required immediately if a temporary guardian is appointed on an emergent basis.

The court-appointed attorney is responsible for advocating on behalf of the ward. The attorney must personally interview the individual to provide insight to the court for determining whether he or she is indeed incapacitated. This attorney will also usually meet with the person petitioning for guardianship and file a report with the court, opining as to whether the guardianship is appropriate and who would be an appropriate guardian.

After a guardianship has been granted, the proposed guardian executes qualification forms before the county surrogate. Afterwards, letters of guardianship will be issued to the guardian. In most cases, the guardian will need to acquire a bond, which ensures against potential mismanagement or abuse of the ward's assets.

How Long Does this Appointment Last?

The appointment may last until the death of the ward or the guardian, until the ward is able to establish that she is competent, or until the guardian resigns or is removed by the court.

What Authority Does the Guardian Have?

Unless limited by the court, the guardian has control over the finances and the personal decisions of the ward. This includes deciding where the ward will live, determining how the ward's funds will be spent and making routine medical decisions for the ward. But some specific decisions, such as the sale of the ward's real estate, will require the guardian to seek the approval of the court in a separate proceeding.

What Are the Responsibilities of the Guardian?

The guardian must account carefully for all of the ward's income and any expenditures made on his/her behalf. This is accomplished by the guardian preparing an inventory of the ward's assets as of the date of appointment, and by filing interim accounts with the court as required, detailing all the income and expenses the ward has. A final account must be filed when the guardianship is terminated unless the Court directs otherwise. The guardian is liable for his/her acts until the court allows (approves) the account or discharges the guardian without requiring an accounting.

The guardianship process can be a very challenging time for a family. Call the Law Firm of Hunziker, Jones & Sweeney, P.A. and allow us to guide you through the guardianship process.



A BRIEF EXPLANATION OF THE GUARDIANSHIP PROCESS IN NEW JERSEY

Occasionally, an individual can no longer manage his or her own affairs as a result of a mental or physical disability. If a legally prepared power of attorney has been signed, the trusted agent can act on that person's behalf. If a power of attorney was not signed, a guardianship application must be filed in court to permit the trusted family member, friend or professional to handle the ward's personal and financial affairs. Without a power of attorney or court-ordered guardianship, even a spouse does not have the legal authority to sign their spouse's signature.

A guardianship is a protective arrangement established by the court system on behalf of a mentally incapacitated individual. Most frequently, guardianships are established on behalf of older adults who have lost mental capacity due to senility, dementia, major strokes, or severe mental illness. A guardian is a person appointed by a court to make financial and personal decisions for a mentally incapacitated person. The person for whom a guardian is appointed is called a "ward."

Guardianships are established when an individual has lost mental capacity, and no one can lawfully act for him or her, due to the absence of a living will and power of attorney. There are two types of guardianship:

1. guardian of the person
2. guardian of the property

The guardian of the person is in charge of making personal and medical decisions on behalf of a ward. The guardian of the property is in charge of making financial decisions on behalf of the ward. Frequently, one person will serve as both guardian of the person and guardian of the property; however, more than one person can serve as guardian. As such, situations can arise when one person serves as guardian of the person

and another as the guardian of the property. Also, there can be co-guardians where two or more individuals will have equal authority over both personal, medical and financial matters. Although any responsible adult may serve as guardian, the state statute designates priority first to the spouse of the mentally incapacitated individual. If a spouse is unable or unwilling to serve, an adult child is the next preferred choice.

To successfully establish a guardianship, the court requires detailed information regarding the personal, medical, and financial history of the ward. Every guardianship action starts with a complaint filed in Superior Court, located in the county where the mentally incapacitated individual resides, or where they are being treated in a long-term care facility. The complaint must state the plaintiff's name, age, domicile and address; the mentally incapacitated person's name, age, domicile and address; a list of the names and addresses of immediate family members; and a statement as to the need for a guardianship. The complaint must be accompanied by certifications from two physicians who have examined the mentally incapacitated individual. These certifications must be based upon examinations that occurred no longer than thirty days prior to the filing of the complaint.

In addition to the complaint, the plaintiff must also prepare an affidavit stating the nature, location, fair market value and assessed value of the mentally incapacitated person's real estate. The affidavit must also include all the personal estate of the mentally incapacitated person, including the nature and total or annual amount of any compensation, pension, insurance, or income. The plaintiff must make reasonable efforts to learn this information prior to filing the complaint.

What Are the Alternatives to Guardianship?

There are several, less restrictive alternatives to guardianship. These include the durable powers of attorney, representative payees, trusts and health care proxies. Each of these options may avoid or delay the need for a guardian. These documents need to be executed, however, before the individual is incapable of doing so, due to mental impairment.

A second alternative which also requires an application to the New Jersey Superior Court is a conservatorship. The conservatorship proceeding is similar to a guardianship, in that it requires notice to the heirs, an appointment of an attorney to represent the ward, posting of a bond, and a duty to account. However, in a conservatorship, the ward must be competent and able to express her wishes

as to the choice of the conservator and to request that the conservator manage his or her finances. Conservatorships are strictly limited to financial matters and have no effect on a person's ability to make medical decisions for themselves.

The Role of the Attorney

The services of a qualified elder law attorney when dealing with guardianship or conservatorship matters may be helpful to you. These attorneys are experienced in all aspects of applying for or defending these actions and can better advise you of the procedures required and choices available. Before hiring an attorney, you should always inquire about his or her particular experience and training in the area in which you need assistance.



THE GUARDIAN'S RESPONSIBILITIES:

You should begin gathering documents right from the first moment you consider taking on the role of a guardian. Guardianship is necessarily a very document- and detail-heavy endeavor because you are taking legal responsibility for the welfare of another human being. Guardians work very closely with the courts in their county or state, and documents are crucial to create a record of the guardianship.

Preserving All Guardianship Documents

Whether you're the guardian of an elderly relative, a child, or someone otherwise unable to make their own legal decisions, you are responsible for the management and safety of that person's assets. As such, you need to gather every document relevant to the management of these assets. Think about your duties and which documents may contain information pertaining to each duty, such as:

- Documents about medical care or treatment, particularly invoices and insurance information
- Receipts reflecting the purchase of necessities, such as food, clothes, cars, household items, and other personal items
- Invoices showing educational costs
- Investment and financial statements
- Banking statements and check ledgers
- Legal documents pertaining to your guardianship and to any lawsuits to which the ward may be a party
- Wills, trusts, or any other documents regarding any inherited assets of the ward
- Documents showing ownership and valuation of property held by the guardianship estate
- Previous guardianship inventories, accountings, and appraisals prepared for the court



A SUMMARY OF CLIENT SERVICES – GUARDIANSHIP

Hunziker Jones & Sweeney provides not only the experience in pursuing guardianships, but also personal attention to clients involved in difficult family situations.

Initially, the firm will provide assistance in analyzing the family situation and advising as to whether a guardianship may be necessary. These services include:

- Interviews with family members and reviews of existing health care directives or other documentation affecting alternative courses of action
- Review of assets to establish any questions regarding ownership of assets
- Review of any existing medical reports
- Discussion of options with regard to the choice of guardian

Once a decision is reached to proceed with the guardianship, the firm provides assistance in drafting pleadings and implementing the process:

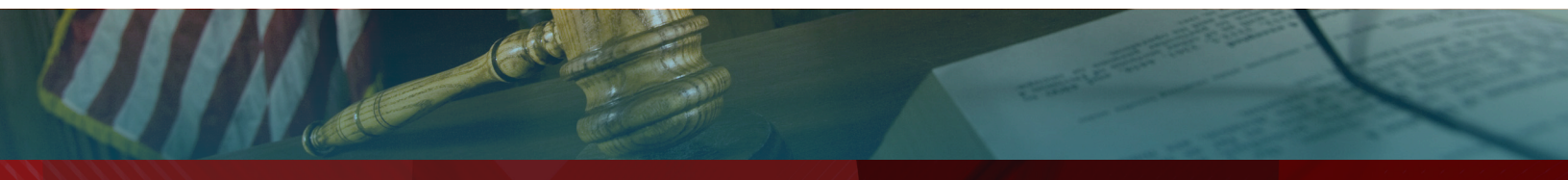
- Making arrangements for medical interviews of the proposed ward and directing clients to doctors familiar with the process and correct legal standards
- Drafting of complete pleadings in order to ensure that the matter is heard as quickly as possible

- Arrangement of all necessary personal service on interested parties
- Interrelationship with an attorney appointed by the court to represent the incapacitated person in order to avoid difficulties
- Appearance in court at the hearing
- Drafting of final judgment
- Qualification of the client as a guardian

In addition to the above formal action on behalf of the client, the firm provides an extensive network of elder law and guardianship services which can assist the client; including connections with physicians, care providers, community support groups, and trust officers affiliated with institutions experienced in acting as guardians.

In those cases which raise questions regarding contested issues about guardianship or the appropriate guardian, the firm has a wealth of experience to call on to prepare such a contested case, including:

- Doctors who are experienced in providing in-depth knowledge regarding mental competency and testifying as to same
- Investigative techniques regarding tracing of assets
- Discovery regarding contested issues



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