

**FLORIDA LAW
and
GUARDIAN ADVOCACY:
A GUIDE for FAMILIES and
FRIENDS of DEVELOPMENTALLY
DISABLED INDIVIDUALS**

*Fifth Judicial Circuit
Lake County, Florida*



FLORIDA LAW and GUARDIAN ADVOCACY

*Fifth Judicial Circuit
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**Honorable Heidi Davis
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Lake County Courthouse
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This Guide does not constitute legal advice and is intended as a resource only.

If you require additional information, please consult with an attorney who is experienced in guardian advocacy for legal advice. Please be aware that the law and rules referenced in this Guide may change. An attorney can assess the requirements of your individual circumstances.

Effective October 1, 2014.

Chapter 393, Florida Statutes, Governs Developmental Disabilities

Section 393.062 is designated as “Legislative Findings and Declaration of Intent”

The Legislature finds and declares that existing state programs for the treatment of individuals with developmental disabilities, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to many clients. A redirection in state treatment programs for individuals with developmental disabilities is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that prevent or reduce the severity of developmental disabilities. Further, the greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements. This goal cannot be met without ensuring the availability of community residential opportunities in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians and that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home. The Legislature further declares that, in developing community-based programs and services for individuals with developmental disabilities, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preference in lieu of operation of programs directly by state agencies. Finally, it is the intent of the Legislature that all caretakers unrelated to individuals with developmental disabilities receiving care shall be of good moral character.

A Guide to the Process of Becoming a Guardian Advocate for a Person with a Developmental Disability

What is the purpose of Guardian Advocacy?

A parent is the natural guardian of his or her child until that child reaches 18 years of age, the age of majority. Every individual is considered an adult in the eyes of the law when they reach the age of majority, regardless of disability or individual circumstances. Guardian Advocacy is a legal process through which parents, family members, or friends of individuals with a developmental disability can obtain the legal authority to act on the individual's behalf. Guardian Advocate appointments are governed by section 393.12 of the Florida Statutes. A Guardian Advocate is distinguishable from the types of guardians (limited, plenary, or voluntary) that are appointed under chapter 744, Florida Statutes. This Guide is designed to address only the requirements for non-professional Guardian Advocates.

Will the developmentally disabled individual be declared incapacitated?

No, the person with a developmental disability is not declared incapacitated through the Guardian Advocacy process and may retain some rights. Under Florida law, "A person with a developmental disability may not be presumed incapacitated solely by reason of his or her acceptance in nonresidential services or admission to residential care and may not be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States." § 393.12(1)(a), Florida Statutes. A determination of incapacity is made pursuant to chapter 744, Florida Statutes and through a different proceeding than will be discussed here. A Guardian Advocate would not be appointed in that situation.

Who is developmentally disabled?

Under section 393.063(9), Florida Statutes, developmental disability is defined as "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely." The person with the developmental disability for whom a Guardian Advocate is appointed will be known as the "Ward."

What are the powers and duties of a Guardian Advocate?

A Guardian Advocate for a person with a developmental disability shall have the same powers, duties, and responsibilities required of a guardian under chapter 744, Florida Statutes or as defined by the judge in the Order Appointing Guardian Advocate. The judge may require the Guardian Advocate to file an Annual Accounting. If the Guardian Advocate is the representative payee for the Ward's Social Security benefits and those benefits are the Ward's only property, the judge may, in his or her discretion, waive that requirement.

Do I need an attorney to become a Guardian Advocate?

No, the process of becoming a Guardian Advocate of a person with developmental disabilities does not require the hiring of an attorney. During the Guardian Advocacy proceedings, the Court will appoint an attorney for the person with a developmental disability to ensure that his or her best interest is protected. The person seeking to be appointed as Guardian Advocate will not incur any expense for the appointed attorney. The person with the developmental disability (or their family) may hire their own private attorney to represent the potential Ward, if they choose to do so.

The Court may require that the person seeking appointment as Guardian Advocate be represented by an attorney in certain situations. If the person seeking appointment as Guardian Advocate will be delegated any rights regarding property other than as representative payee for government benefits, such as a pending settlement or judgment from a lawsuit, an estate matter, or if the developmentally disabled individual owns any other property, an attorney must be retained by the proposed Guardian Advocate. The fact that such property is involved does not preclude appointment under the Guardian Advocacy statute, however, depending on the circumstances, the Court may find that appointment of a guardian under chapter 744, Florida Statutes, is more appropriate.

Who may Petition the Court to Appoint a Guardian Advocate?

A person who is an adult and a resident of the State of Florida must execute the Petition to Appoint Guardian Advocate. This person is called the "Petitioner." The Petitioner may or may not be the same person as the proposed Guardian Advocate. If no "willing and qualified" Guardian Advocate can be located, the Petitioner may specify that in the Petition.

Who may serve as a Guardian Advocate?

The qualifications to serve as a Guardian Advocate are the same as those required of any guardian under chapter 744, Florida Statutes. Any resident of the State of Florida who is 18 years old and of sound mind is qualified to act as Guardian Advocate, unless they fall within any category in the next section. A person who is a non-resident of Florida may serve as a Guardian Advocate if he or she is related to the Ward by blood, adoption, or law, according to section 744.309(2), Florida Statutes. The Court will also consider the wishes expressed by a developmentally disabled person as to whom will be appointed as the Guardian Advocate.

Who may NOT serve as a Guardian Advocate?

Any person who falls within one or more of the following categories may NOT be appointed as Guardian Advocate:

1. Any person who has been convicted of a felony.
2. Any person who, from any incapacity or illness, is incapable of discharging the duties of a Guardian Advocate, or who is otherwise unsuitable to perform the duties of a Guardian Advocate.
3. Any person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in sections 39.01 and 984.03(1), (2), and (37), Florida Statutes.
4. Any person who has been found guilty of, regardless of adjudication, or entered a plea of no contest to any offense enumerated in section 435.14, Florida Statutes or under any similar statute of another jurisdiction. This section enumerates offenses that will cause a person to fail a Level 2 background screening, which may be required before appointment as a Guardian Advocate, as detailed below.
5. Any person who provides substantial services to the proposed Ward in a professional or business capacity, or is a creditor of the proposed Ward.
6. Any person who is an employee of any person, agency, government, or corporation that provides services to the proposed Ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed Ward or the Court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed Ward's best interest.
7. Any provider of health care services to the proposed Ward, whether direct or indirect, unless the Court specifically finds there is no conflict of interest with the proposed Ward's best interests.

Do I have to submit to a background investigation?

Yes. Section 744.3135, Florida Statutes, requires all guardians seeking appointment by the Court, with some limited exceptions, to acquire, *at their own expense*, a credit history investigation and to undergo a Level 2 background screening. Under certain circumstances, the Court may waive these requirements.

Will I be required to receive instruction or training?

Yes, each person appointed as a Guardian Advocate must complete the required number of hours of instruction and education within four (4) months after his or her appointment, *at his or her own expense*. The training must be completed through a course approved by the Chief Judge of the Circuit Court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

The Court may, in its discretion, waive some or all of the training requirements or impose additional requirements. The Court will make its decision on a case-by-case basis considering the experience and education of the Guardian Advocate, the duties assigned to the Guardian Advocate, and the needs of the Ward. See section 744.3145.

Will I be required to file annual reports with the Court?

Yes. A Guardian Advocate must file an Initial Report *within 60 days* of appointment pursuant to sections 744.361 and 744.362, Florida Statutes. The initial report must include a statement of medical, mental, or personal care services of the Ward, and a statement of the place and kind of residential setting best suited for the needs of the Ward. In addition, the Initial Report should include any expected physical and mental examinations, if necessary to determine the Ward's medical and mental health treatment needs.

In addition, a Guardian Advocate *must* file a report *each year*. The Annual Report must be filed *within 90 days* from the anniversary date of appointment as Guardian Advocate. The Annual Report must include information concerning the residence of the Ward, the medical and mental health conditions, treatment, and rehabilitation needs of the Ward, and the social condition of the Ward. If the Ward has a cost plan utilized in receiving services from the Agency for Persons with Disabilities, the cost plan can be submitted as part of the Annual Report.

How do I initiate the appointment process to become a Guardian Advocate?

STEP ONE: Complete all necessary paperwork. All of the referenced Forms are available in both pdf and Word format on the Fifth Circuit's website at <http://www.circuit5.org/c5/> .

➤ **Form A—Application for Proposed Guardian Advocate**

- ❖ This form asks for basic information about the person requesting to be appointed Guardian Advocate, including education, employment history, and other relevant information. If two parents wish to both be appointed as Guardian Advocates for their adult child with developmental disability, they should each submit Form A.

➤ **Form A1—Application for Proposed Successor Guardian Advocate (optional)**

This form asks for basic information about the person requesting to be appointed Successor Guardian Advocate, including education, employment history, and other relevant information. The Successor Guardian Advocate does not have to submit to any screening, education requirements, or background check until such as a time as the Guardian Advocate can no longer serve due to death or disability and the Successor must then ask the Court to be appointed.

➤ **Form B—Notice of Petition for Guardian Advocate**

- ❖ This form will be given to the person with the developmental disability in order to notify him or her that a petition has been filed to seek appointment of a Guardian Advocate of his or her person.
- ❖ This notice must also be given to the next of kin of the person with a developmental disability, if any, a health care surrogate that has been designated by the person with a developmental disability pursuant to advance directive under Chapter 65, if any, an agent that has been designated by the person with a developmental disability under durable power of attorney, if any, and any other persons as the Court may direct.

Next of kin means those persons who would be heirs of the person with developmental disability, including parents or lineal descendants of the developmentally disabled individual.

➤ **Form C—Petition for Guardian Advocate**

- ❖ This form requests information regarding your reasons for requesting appointment as Guardian Advocate.
- ❖ This form asks for information about the person with a developmental disability and his or her capacity to make decisions.
- ❖ Attach the medical records, school records, individual support plan, individual education plan, and any other professional reports, which document the condition and needs of the person with a developmental disability.

- **Form D—Order Appointing Attorney/Elisor**
 - ❖ This form is necessary to the proceedings. The Court will appoint an attorney to represent the person with a developmental disability within three (3) days after a Petition for Guardian Advocate has been filed.
 - ❖ There is no cost to the proposed Ward or the Petitioner for the appointment of the attorney.
 - ❖ The person with a developmental disability may substitute his or her own attorney for the one appointed by the Court, *at his or her own expense*.

- **Form E—Oath of Guardian Advocate, Designation and Acceptance of Resident Agent**
 - ❖ This form is to ensure that the proposed Guardian Advocate will faithfully perform his or her duties if selected, and certifies that all the information presented to the Court in this proceeding is true.
 - ❖ This form designates the Resident Agent, the person who will receive service of process of notice of documents concerning the Guardian Advocate, if any. The Resident Agent must be a resident of the county where the court case is pending, pursuant to Florida Probate Rule 5.110.

- **Form F--Application for Indigent Status**
 - ❖ **This form is optional.** It is *only needed* if the proposed Guardian Advocate *cannot* afford the court filing fees. According to section 57.082, Florida Statutes, an applicant is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services. If the proposed Guardian Advocate is found to be indigent, the court filing fees will be waived.
 - ❖ There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.

2014 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household	Poverty Guideline	200% of Poverty Guideline
1	\$11,670	\$23,340
2	15,730	31,460
3	19,790	39,580
4	23,850	47,700
5	27,910	55,820
6	31,970	63,940
7	36,030	72,060
8	40,090	80,180
For families/households with more than 8 persons, add \$4,060 for each additional person.		

Note: These guidelines change each year.

STEP TWO: File the following paperwork and envelopes with the Lake County Clerk of Court, Probate Division, located at the courthouse in Tavares:

- Form A—Application for Proposed Guardian Advocate
- Form B—Notice of Petition for Guardian Advocate
- Form C—Petition for Guardian Advocate and three (3) copies of the original Petition of Guardian Advocate.
- Form D—Order Appointing Attorney/Elisor and three (3) copies of the original Order Appointing Attorney.
- Form E—Oath of Guardian Advocate
- Filing Fees *or* Form F—Application for Indigent Status
 - *The filing fee for Guardian Advocate of a Person is \$235.00 as of September, 2014. If you cannot afford the fees, file Form F, the application for indigent status.*
- One large self-addressed stamped envelope with sufficient postage for the return of copies of documents.
- Envelopes with postage addressed to the following persons, if any:
 - The next of kin of the person with a developmental disability
 - The health care surrogate designated by the person with a developmental disability pursuant to advance directives.
 - An agent designated by the person with a developmental disability under durable power of attorney.
- Keep copies of all the documents filed with the Court for your records.

The following is contact information for the Lake County Clerk of Court, Probate Division:

Lake County Clerk of Court

Attn: Probate Division

550 W. Main Street

Tavares, FL 32778

Phone: (352) 742-4122

STEP THREE: Arrange for a hearing.

Once all the necessary documents and envelopes are filed with the Court, you should receive a call from the Probate Clerk providing you with the case number, the name of the Judge assigned to the case, and the name of the attorney appointed to represent the person with a developmental disability. If you have not heard from the Probate Division within two (2) weeks of the date the documents were filed, call the Probate Division at (352) 742-4122.

After receiving the call from the Probate Clerk, you must call the assigned Judge's Judicial Assistant to schedule a hearing. You must coordinate the hearing time with the appointed attorney for the person with a developmental disability. Next, provide the agreed upon hearing date to the Probate Clerk. Shortly thereafter, the Clerk will return copies of the forms you originally filed with the Court for you to handle as indicated below.

STEP FOUR: Mail a copy of the following forms to the appointed attorney, next of kin of the person with a developmental disability, if any, a health care surrogate designated by the person with a developmental disability pursuant to an advanced directive, if any, and an agent designated by the person with a developmental disability under durable power of attorney, if any:

- Application for Proposed Guardian Advocate (*Form A*)
- Notice of Petition (*Form B*)
- Petition of Guardian Advocate (*Form C*)
- Order Appointing an Attorney/Elisor (*Form D*)

STEP FIVE: Coordinate a meeting with the appointed attorney to meet the person with a developmental disability and yourself.

STEP SIX: Attend the Hearing

Bring the following forms with you to the Hearing:

➤ **Form G—Order Appointing Guardian Advocate**

- ❖ Complete this form prior to the hearing. You will be asked to provide this form to the Judge for his or her signature if you are appointed as Guardian Advocate. NOTE: The date this Order is signed by the Judge is the date that the Petitioner is appointed as Guardian Advocate. It will become necessary to keep track of this date to calculate all of the time periods in which to file further documents with the Court, as explained below.

➤ **Form H—Letters of Guardian Advocacy**

- ❖ Complete this form prior to the hearing. You will be asked to provide this form to the Judge for his or her signature if you are appointed as Guardian Advocate. These Letters are the paperwork that the Guardian Advocate will need to produce when presenting him/herself as the appointed Guardian Advocate and when making decisions for the Ward. Keep the original of both Forms G and H in a safe location and carry copies when performing services for the Ward.

At the hearing, the facts of the petition will be presented to the Judge. The person with a developmental disability should attend the hearing if he or she is able to travel. Any persons wishing to be appointed as Successor Guardian Advocate should also attend the hearing. The Judge will swear in the Petitioner and ask questions about the Ward. The Judge may also question the Ward and other family members, if present. The Judge will then make a decision whether or not to appoint the Petitioner as Guardian Advocate.

STEP SEVEN: Fulfill the Education Requirement within four (4) months of appointment as Guardian Advocate. Submit documentation showing proof that Education Requirement has been completed with the Court. See pages 3–4 of this Guide for Education Requirement.

STEP EIGHT: Submit the Initial Plan

File **Form I—Initial Plan** with the Court within 60 days of appointment as Guardian Advocate. This form asks for information about how the Guardian Advocate plans to care for the Ward. Copies of the Initial Plan must also be sent to the Ward and the attorney appointed for the Ward.

STEP NINE: File an Annual Plan with Court each year.

File **Form J—Annual Plan** with the Court *each year* within 90 days of the anniversary date of the appointment as Guardian Advocate.

- ❖ **This form is mandatory and must be filed each year** within 90 days from the anniversary of appointment as Guardian Advocate.
- ❖ This report must include information concerning the residence of the Ward, the medical and mental health conditions of the Ward, the treatment and rehabilitation needs of the Ward, and the social condition of the Ward.
- ❖ Each plan must also address the issue of restoration of rights to the Ward as to whether restoration of any rights which were removed from the Ward would be appropriate.
- ❖ You must attach a report from the treating physician of the person with a developmental disability regarding the person's most recent physical and/or

mental examination. This report must have been issued within 90 days of the filing of the report.

STEP TEN: File Form K and proof of fulfillment of the education requirements with the Court.

Checklist for Guardian Advocate Appointment

1. Complete all necessary paperwork.
2. File paperwork with Lake County Clerk of Court, Probate Div.
3. Set up Hearing with Judge's Judicial Assistant;
Coordinate Hearing with Appointed Attorney
4. Mail paperwork, as needed.
5. Meet with Appointed Attorney.
6. Attend Hearing in Judge's Chambers/Courtroom.
7. Fulfill Guardianship Education Requirements and file with Court.
8. File Initial Plan with Court within 60 days of initial Order.
9. File Annual Plan with Court each year within 90 days of
anniversary date of initial Order.
10. File Form K when the Guardian Advocate has completed the
education requirements.

Checklist of Guardian Advocate Forms

1. Form A—Application for Proposed Guardian Advocate
2. Form B—Notice of Petition for Guardian Advocate
3. Form C—Petition for Guardian Advocate
4. Form D—Order Appointing Attorney/Elisor
5. Form E—Oath of Guardian Advocate
6. Pay Filing Fees *or* file Form F—Application for Indigent Status
7. Form G—Order Appointing Guardian Advocate
8. Form H—Letters of Guardian Advocacy
9. Form I—Initial Plan
10. Form J—Annual Plan
11. Form K – Notice of Education Requirement