

FLORIDA GUARDIAN ADVOCATE LAW

INFORMATION AND HOW-TO GUIDE FOR THE PROCESS OF APPLYING TO BE A GUARDIAN ADVOCATE FOR A PERSON WITH A DEVELOPMENTAL DISABILITY

*Twentieth Judicial Circuit
Lee County, Florida*



This guide does not constitute legal advice and is intended merely to serve as a resource. Please consult with your attorney for legal advice. Please be aware that the law may change and you should consult with your attorney for assistance.

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What is a Guardian Advocate?

Parents no longer have the legal authority to make decisions for their children after they turn 18 years of age. Guardian Advocacy is a process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision making ability to do some, but not all of the decision making tasks necessary to care for his or her person or property. This is accomplished without having to declare the person with a developmental disability incapacitated. Guardian Advocate appointments are governed by Florida Statute Section 393.12.

Who is developmentally disabled?

Under the Florida Statute Section 393.063(9), a person with a developmental disability must have mental retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome that manifested before the age of 18, and constitutes a substantial handicap that can be expected to continue for the rest of the person's life. The person with the developmental disability for whom a Guardian Advocate has been appointed is 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 Florida Statute Chapter 744 and those defined by the judge.

Do I need an attorney to become a Guardian Advocate?

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.

If there is property involved, other than social security benefits or other government payee programs, the person seeking to become a Guardian Advocate of the person and the property *must* hire an attorney. These property rights include, but are not limited to a pending lawsuit, estate matter, or other income or property right coming to the person with a developmental disability. The Court can expand the description of property rights by Petition and Order.

Who may serve as a Guardian Advocate?

Any resident of the State of Florida who is 18 years old and of sound mind is qualified to act as Guardian Advocate. In addition, a non-resident may serve if he or she is related to the Ward by blood, adoption or law according to Florida Statute Section 744.309(2).

The court may appoint any person whom it considers fit, proper, and qualified to act as guardian whether or not related to the ward. However, the court gives preference to a person who:

- Is related by blood or marriage to the person with the developmental disability;
- Has relevant educational, professional or business experience;
- Has the capacity to manage the finances involved; or
- Has the ability to meet the requirements of the law and the unique needs of the individual.

The court shall also consider the wishes expressed by a developmentally disabled person as to who shall be appointed guardian.

Who may NOT serve as a Guardian Advocate?

No person who has been convicted of a felony can be appointed to act as Guardian Advocate. Furthermore, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in Florida Statutes Sections 39.01 and 984.03(1), (2), and (37), or who has been found guilty of, regardless of adjudication, or entered a plea of no contest under any similar statute of another jurisdiction can be appointed to act as a Guardian Advocate.

Additionally, a person who provides substantial services to the proposed ward in a professional or business capacity, or is a creditor of the proposed ward, may not be appointed Guardian Advocate and retain that previous professional or business relationship. A person may not be appointed as Guardian Advocate if he or she is an employee of any person, agency, government, or corporation that provides service 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.

A provider of health care services to the ward, whether direct or indirect, may not be appointed the Guardian of the ward, unless the court specifically finds there is no conflict of interest with the ward's best interest.

Do I have to submit to a background investigation?

Florida Statute Section 744.3135 *shall* require non-professional Guardian Advocates to agree to a background investigation of the Guardian Advocate's credit history and to a level 2 background screening *at their own expense*.

The Guardian Advocate must call a live scan service provider to schedule an appointment to undergo the finger printing process. The cost will vary from provider to provider, so the Guardian Advocate should ask each provider about the cost involved. The background screening results must be received from the Florida Department of Law Enforcement (FDLE) and Federal Bureau of Investigation to the ORI (**FL036023Z**). Please remember the background check must be completed before a hearing for appointment as Guardian Advocate can be scheduled.

Will I be required to receive instruction or training?

According to Florida Statutes Section 393.12(10) and Section 744.3145, each person appointed to be a Guardian Advocate must complete the required number of hours of instruction and education within 4 months after his or her appointment. 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.

Expenses incurred by the Guardian Advocate to satisfy the education requirement may be paid from the ward's estate, unless the court directs that such expenses be paid by the Guardian Advocate individually.

The court may, at 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.

Will I be required to file reports to the court regarding the person with the developmental disabilities?

A Guardian Advocate must file an Initial Guardianship Plan and those with property use Initial Inventory *within 60 days* of appointment pursuant to Florida Statute Section 744.361 and 744.362. 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 includes all physical and mental examinations 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 Guardianship Plan of Guardian – Guardian Advocate of the Person must be filed *within 90 days* from the anniversary date of appointment as Guardian Advocate (See Appendix B). 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.

How do I contact the Clerk of Court, Probate Office?

Mail: P. O. Box 9346, Fort Myers, FL 33902

In Person: Lee County Justice Center, 2nd Floor, 2075 Martin Luther King Jr. Blvd, Fort Myers, FL 33901

Telephone: 239.533.5000

Email: Guardianship@leeclerk.org

How do you become a Guardian Advocate?

First: Complete and file paperwork with the Clerk's Office:

- **Application for Appointment as 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.

- **Petition for Appointment of Guardian Advocate of the Person**
 - ❖ This form requests information regarding your reason for becoming Guardian Advocate.
 - ❖ This form asks for information about the person with the 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, documenting the condition and needs of the person with the developmental disability.
- **Designation of Current Mailing and E-Mail Address**
- **Order Appointing Attorney and Elisor** (will be completed by the Clerk)
 - ❖ This form is necessary to the proceedings the Court will appoint an attorney to represent the person with a developmental disability within 3 days after a petition has been filed.
 - ❖ The person with a developmental disability may substitute his or her own attorney for the one appointed by the court.
- **Oath of Guardian Advocate, Designation of Resident Agent & Acceptance**
 - ❖ This form is to ensure that the Proposed Guardian Advocate will faithfully perform his or her duties if selected, and confirms that all the information before the court in this proceeding is true.
 - ❖ This form designates the Resident Agent, the person who shall 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 Rules of Probate, Rule 5.110.
- **Filing Fees**
 - ❖ *The filing fee for Guardian Advocate of Person is \$235.00*
 - ❖ *The filing fee for Guardian Advocate of Person and Property is \$400.00 (It is required to have counsel representation for this case type.)*
 - OR**
 - ❖ **Application for Indigent Status** (application ***must be approved*** in order for filing fees to be waived). It is *only needed* if the Petitioner *cannot* afford the filing fees.

*****Keep copies of all the documents you file*****

Second: Hearing is scheduled

Once all the necessary documents are filed with the Court, the Clerk of Courts will schedule a hearing.

- The Magistrate's office will mail Notice of Hearing to the Petitioner and Next of Kin.
- The Clerk's Office will send:
 - Order Appointing Attorney sent to petitioner
 - Order of Referral sent to Petitioner and Next of Kin

Note: If you have not received your documents by 30 days after filing, please call Lee County Clerk of Courts at 239-533-5000 or email Guardianship@leeclerk.org.

Third: Schedule an appointment with the attorney appointed to represent the person with a developmental disability to meet you and the person with the developmental disability. Please refer to the “Order of Appointing Attorney” filed on the case.

Fourth: Attend the Hearing

Bring the following forms with you to the Hearing:

- **Order Appointing Guardian Advocate of The Person Only** (include copy and self-addressed stamped envelope)
 - ❖ 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.
- **Letters of Guardian Advocacy of the Person Only**
 - ❖ 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.

At the hearing, the facts of the petition will be presented to the Judge or Magistrate. The Judge or Magistrate will make a decision whether or not to appoint a Guardian Advocate. The person with a developmental disability should attend the hearing if he or she is able to do so.

Fifth: Fulfill the Education Requirements

See information listed on [page 4](#) of this guide.

Sixth: File the initial plan with the Clerk of Court:

- **Initial Guardianship Plan** - This form asks for information about how the Guardian Advocate plans to care for the Ward. It must be filed to the Court within 60 days of appointment as Guardian Advocate. Copies of the form must be sent to the Ward and the attorney for the Ward.

Seventh: The following forms are required to be filed *each year* within *90 days* from the anniversary of the appointment as Guardian Advocate.

- **Annual Guardian Plan of Guardian – Guardian Advocate of Person**
 - ❖ **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 and 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.
 - ❖ *You must attach a report from the physician of the person with a developmental disability. The [Physician’s Report](#) must have been issued within 90 days of the filing of the report.*
- **Order Approving Annual Guardianship Report of Guardian Advocate of the Person**
 - ❖ Include a copy and a self-addressed stamped envelope for the return so you may receive a copy for your records.