

Guardianships

A guardianship is a grant of authority, ordered by the court, authorizing an agent to act on a principal's behalf. An agent, or guardian, will have many responsibilities in their role. Most importantly, the guardian must act in the best interests of the principal at all times.

When is a guardianship appropriate?

A guardianship tends to be reactive in nature. A loved one might have difficulty managing their bank account or may become forgetful. While we all have moments like this, a guardianship becomes appropriate when a person is unable to manage their own financial affairs and/or their own health care due to a lack of capacity. Moreover, it must also be true that no feasible alternatives exist for the individual.

Still Have Questions?

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Securing the right to protect your loved ones

Guardianships

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Who can be a guardian?

This will depend on the situation. Typically, the role of a guardian is filled by:

- Family Members
- Professional Fiduciary
- Authorized Corporations
- Disinterested Public Agencies

Under North Carolina law, the Clerk of Superior Court will decide who should function as guardian.

What is the process for a guardianship?

Initially, it should be determined whether alternatives exist before proceeding with a guardianship. If an individual still has some capacity, certain methods can be used to accomplish many of the goals of a guardianship.

However, if a person has lost capacity and requires guardian, a petition for guardianship will need to be filed.

Once the petition is filed, the process can be long and require a lot of work.

The Clerk of Superior Court will decide whether the medical and personal evidence presented is enough to find by clear, cogent and convincing evidence that a person is incapable of managing his/her own affairs.

A guardian's authority can be limited if the respondent is able to function in specific areas.

What happens if I become a guardian?

You are responsible for the ward. You must take possession of assets, such as property and bank accounts.

You must make an accounting initially, and annually. You must keep VERY accurate records. All your expenditures must be approved by the court, so making a budget for the court is a good idea. You must invest all funds not needed for everyday activities. You must file taxes. You can be paid for your work, if it is approved by the court in advance.

A notice of the guardianship must be recorded with every county in which your ward has property.

What steps should I take?

Be proactive. Before the situation occurs where a guardianship becomes necessary, a person can take steps to prevent court involvement. Powers of attorney, trusts and representative payees are legal measures that can be taken to avoid a guardianship.

A guardianship is a very complex undertaking and requires care and diligence on your part. Hiring people you can trust to help may be helpful.

Whom can I call for help?

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