



Guardianship Q & A

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What is a guardianship?

In Washington, guardianship is established by a Superior Court for the care of the person and/or the management of the property of someone who is not capable of handling his or her own affairs.

Can a guardian be appointed to take care of only personal needs or only financial needs?

Yes. The court may appoint a guardian of the person, a guardian of the estate, or a guardian of the person and the estate, depending on the needs and capabilities of the incapacitated person.

Are all incapacitated persons considered totally incompetent?

No. The court determines what degree of capacity the proposed incapacitated person has. As an alternative to a full guardianship, the court may appoint a limited guardian by defining exactly which powers are given to the limited guardian and which rights are retained by the incapacitated person. For example, an incapacitated person might retain the right to vote, make contracts, and make medical decisions.

Who may be the guardian?

Any suitable person (such as a person nominated by the alleged incapacitated person, a family member, or a professional guardian) or certain corporations may be appointed guardians of a person or an estate. Certain banks can be appointed guardians of an estate. Effective in January 2000, a person or agency serving as a Professional Guardian in Washington must be Certified under Court Rules and Regulations.

What are the legal steps to start a guardianship?

A concerned person (prospective guardian, family member, friend) or attorney general petitions the court alleging the need for a guardian. The petition must contain the names and addresses of the relatives who are most closely related to the alleged incapacitated person. Legal notice of the purpose, place, and time of the hearing is given to the alleged incapacitated person and the relatives. Prior to the hearing, the court makes sure the person is represented by legal counsel and appoints a guardian ad litem to investigate the appropriateness of the proposed guardianship. At the hearing, the court decides if a guardian is needed and makes the appointment, if appropriate.

What are the guardian's responsibilities?

A guardian of both the person and the estate is legally responsible for all decisions regarding the health and welfare of the incapacitated person and for the prudent use and protection of the incapacitated person's assets. This normally involves paying bills, investing money, managing property, supervising personal care, and arranging appropriate residence. A guardian must make an annual accounting to the court unless the court extends the time period. Besides accurately accounting for income and expenditures, it must include a time-accurate outline of every service performed for the incapacitated person during the period in consideration. A guardian is paid only after the accounting is approved by the court.

If an incapacitated person's money runs out, a guardian arranges for Medicaid, SSI or Social Security Disability. A guardian is committed to being a lifetime advocate for an incapacitated person.

Who supervises a guardian?

Guardians are directly supervised by the courts.

Are guardians licensed?

Beginning in 2000, legislation requires guardians to be certified in Washington. Professional guardians must register, submit to a background check, and participate in mandatory training.

What does guardianship cost and where does the money come from?

The court allows reasonable and necessary fees for the services provided for the incapacitated person. After approval by the court, guardian and attorney fees are paid directly from the incapacitated person's estate.

What safeguards are there to protect an incapacitated person's assets?

A bond is required, as directed by the court, and paid for by the estate. If the guardian is negligent in his/her duties and causes a loss to the estate, the court can remove the guardian and order the recovery of the loss to the estate.

Can a professional guardian be a beneficiary of an incapacitated person's estate?

The National Guardianship Association considers a guardian or his/her company being a beneficiary of an incapacitated person's estate to be a conflict of interest and therefore improper.

What rights does a incapacitated person have?

An alleged incapacitated person has the right to question the need for guardianship when the court is considering the appointment of a guardian. He or she has the right to an attorney, either private or court-appointed, and the court appoints a guardian ad litem to investigate the need for guardianship. After holding a hearing to consider the contentions of the alleged incapacitated person and the results

of the guardian ad litem's research, the court makes the final decision.

Can a guardianship be reversed?

Yes. A person already under guardianship may request a change of guardian. If a person's capacity returns, the incapacitated person can petition court through an attorney to remove or modify the guardianship.

How does a guardian get clients?

Guardians get referrals from doctors, attorneys, social workers, hospital discharge planners, convalescent facilities, government agencies, families, and word of mouth. Occasionally the court will recommend a guardian be appointed to resolve a family dispute.

How is a family involved in a guardianship?

The family is a valuable ally. A guardian will incorporate a family's wishes in the care planning and estate management whenever appropriate. Final decisions, however, are the legal responsibility of the guardian.

Who is Lexie Lamborn?

Lexie Lamborn is a nationally recognized Master Guardian with over 25 years of experience in assisting elders and their families with aging issues. She received her Master of Public Health Degree from the University of Hawaii, has directed a major guardianship program in Los Angeles and is currently in private practice as a Certified Professional Guardian in the Pacific Northwest.

She was on the Board of the National Guardianship Association (NGA) for nine years ending in 2003, and is currently serving on the Board of the Center for Guardianship Certification (CGC).

This Q & A has been adapted by Lexie and Terry H. Schaberg, a Mount Vernon Attorney, from a document developed by the Professional Conservators of Southern California in 1995.