



GUARDIANSHIP

Guardianship is a legal relationship whereby the Circuit Court gives a person (the guardian) the power to make personal and financial decisions for another (the ward). A guardian may be appointed when a Circuit Court determines that an individual (the ward) is unable to care for themselves by reason of mental illness, mental retardation or physical incapacity.

Guardianship is appropriate when impaired judgment or capacity poses a major threat to a person's welfare. A medical evaluation by two licensed physicians is necessary to establish the proposed ward's condition. However, only a court can determine the need for a guardian.

Assuming that two physicians are prepared to attest to the proposed ward's incompetence, a petition must be filed with the Circuit Court requesting the appointment of a guardian. The Petitioner must sign the petition. Then, the court directs that the heirs of the ward and the ward is to receive notice of the filing of the petition for guardianship. The court sets a date by which anyone wishing to object may do so, including the proposed ward. Then a hearing is held where a judge decides whether a guardian should be appointed.

A permanent appointment may last until the death of the ward or the guardian, until the ward can establish competence, or until the guardian resigns or is removed by the Circuit Court.

Unless limited by the court, the guardian has total 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. For medical decisions involving extraordinary medical care, the administration of anti-psychotic drugs, commitment to a mental health facility or the sale of the ward's real estate, the guardian must seek the approval of the court in a separate proceeding.

In addition to those concerning authority to consent to medical treatment, the guardian must account carefully for all of the ward's income and expenditures made on the ward's behalf. This is accomplished by the guardian filing an inventory listing the ward's assets with the court as of the date of appointment and by filing annual accounts with the court detailing all the income and expenses the ward has. A final account must be filed when the guardianship is terminated. The guardian is liable for their acts until the court approves the account.

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

