



## DEPARTMENT OF HUMAN SERVICES

### Bureau of Guardianship Services

### **Family Guide to the Guardianship Court Process**

This document describes the guardianship process followed by The Bureau of Guardianship Services (BGS), which is responsible for processing and tracking guardianship actions for people served by the Division of Developmental Disabilities (DDD) who have been evaluated according to state law and determined to require a guardian. BGS is only able to serve individuals who have been determined by DDD, through its application process, to be eligible for its services.

If your family member has been determined to need a guardian, working through BGS is only one of several options you have for pursuing guardianship. Most of these options are described in the DDD BGS Fact sheet entitled Guardianship Frequently Asked Questions.

Many families elect to pursue guardianship privately, either through an attorney or pro se (without an attorney) because these options tend to move faster than the BGS process.

BGS is only able to process guardianship of the person. If your family member has property such as a trust or other large assets, you need to pursue guardianship of person and property through a private attorney. This must be done at your expense or that of the estate.

If a family chooses to have BGS facilitate the court action, the process occurs as follows:

### **Step 1: Identifying a proposed guardian or co-guardians**

BGS contacts the individual's family to determine if any family members are interested in becoming guardians. The law requires that the individual and his/her close relatives be notified of the court action. It is important that BGS receive names and addresses of any spouse, adult children, parents, stepparents, adult siblings and/or other interested relatives of the individual. You may consider having co-guardians appointed. This means more than one person may be appointed at the same time to act on behalf of the individual. The benefit of having two or more co-guardians appointed is the increased chance of a guardian being available to make decisions on the individual's behalf.

### **Step 2: Completing a psychological evaluation**

After identifying potential guardians, BGS makes a referral to a psychologist, who contacts the individual to schedule an evaluation. The purpose is to verify the need for a guardian and the type of guardianship required. New Jersey has two types of guardianship of the person, general and limited. Under general guardianship, the guardian makes decisions and gives consents related to all areas of a person's life. Limited guardianship applies only to certain areas specified by the court; these areas could include residential, vocational, legal, medical or educational issues.

### **Step 3: Receiving a court recommendation**

Based on the psychological evaluation, a recommendation is made as to whether legal guardianship is needed and, if so, whether it should be general or limited. BGS prepares the required paperwork, including a Certification and Acceptance of Guardianship forms, and sends it to the proposed guardian(s) for signature. The Acceptance of Guardianship form must be signed in the presence of a Notary. Most banks have a Notary available to customers; often this service is provided free of charge. It is important to sign and return all forms as soon as possible. If there is significant delay in returning the forms, the Bureau of Guardianship may be recommended to serve as guardian.

#### **Step 4: Filing paperwork with the court**

After receiving signed and notarized forms from the proposed guardian(s), BGS completes the court paperwork and files it with the Superior Court in the individual's county of residence. All interested parties (the individual, his/her proposed guardians and other family listed in the court documents) receive copies of the paperwork and the court date. The court will schedule the court date four to six months from the day the paperwork is filed.

The court then assigns the Department of the Public Advocate office to represent the individual in the court action. An investigator from this office contacts the person and schedules an interview, either directly or through the caregiver.

At least part of the interview must be conducted in private due to client-attorney confidentiality. The investigator also talks to the proposed guardian(s), either in person or by phone. The Public Advocate then writes a report for the court, either agreeing with or opposing the need for a legal guardian and the choice of proposed guardian(s), according to the individual's wishes.

#### **Step 5: Conducting a hearing (if necessary)**

If the Public Advocate does not oppose appointing a guardian, the court reviews the paperwork submitted and signs the judgment without a formal hearing. In this case, neither the individual with the developmental disability nor the proposed guardians need to appear in court.

If the Public Advocate opposes appointment of a guardian, the individual and proposed guardian(s) may have to attend a hearing, where a judge will listen to arguments before making a decision. A Deputy Attorney General will present the arguments in favor of guardianship. Often, a settlement is reached outside the court and a hearing is not needed. The Deputy Attorney General also may notify the parties involved that the hearing has been rescheduled. If you have questions about the need for a hearing, call the Deputy Attorney General listed in the correspondence you receive regarding the hearing.

### **Step 6: Obtaining a court judgment**

Once the court signs the Judgment appointing a guardian, the individual and his/her family receive a copy of it along with Letters of Guardianship. The Surrogate's Court may contact you to sign an additional document before sending the letters of guardianship. These are the official papers identifying the guardian(s) of the individual and whether the guardianship is general or limited. If limited guardianship is determined by the court, the areas of guardianship will be identified in the Judgment and Letters of Guardianship.