

Florida Guardianship Procedures

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by Michael W. Porter, Esquire



A person is qualified under Florida Law to serve as a guardian if he or she is over the age of 18, and a Florida resident who has never been convicted of a felony.

A non resident of Florida may be appointed if related to the "Ward", under certain circumstances.

The procedure is initiated by the filing with the Court of a Petition to Determine Incapacity, in which an individual who has personal knowledge of an alleged incapacitated person requests that the Court evaluate said individual's capacity, and if necessary, remove certain rights from said person and appoint a guardian. Also filed with the Court is

a Petition for Appointment of Guardian, and an Application.

Unless the Alleged Incapacitated Person is indigent, the Petitions must also be accompanied by checks to the Clerk of Court for the filing fees of \$631.00, and to the County Sheriff for \$40.00 for service of process.

The Court also requires \$27.50 as an Investigation Fee, a signed release for the Florida Department of Children and Families, and a completed checklist. All Guardians must submit their fingerprints electronically to the Florida Department of Law Enforcement for a criminal background check, for which the cost of approximately \$60.00 must be paid at the time the fingerprints are taken.

Upon the filing of a Petition to Determine Incapacity, the Court appoints three individuals to serve as members of an examining committee. The examining committee members each meet independently with the al-

leged incapacitated person to evaluate his or her abilities and make a written report, which is filed with the Court.

The Court also appoints an attorney to represent the alleged incapacitated person.

The Court then schedules a hearing approximately three to four weeks from the date on which the Petition to Determine Incapacity is filed, at which testimony and evidence is presented on the issue of the capacity of the alleged incapacitated person. At said hearing, if the Court finds that the person is incapacitated, and that there are no least restrictive alternatives to guardianship, a guardian may be appointed.

If a family member is appointed by the Court to serve as guardian, said family member will be required to attend an eight (8) hour educational course for guardians.

Once appointed by the court, a Guardian is required to file an Initial

Guardianship Report with the court within sixty days of their appointment, including an Initial Guardianship Plan for the care of the ward for a Guardian of the Person, and an Initial Inventory of the ward's assets for a Guardian of the Property.

Annually, A Guardian of the Person must file an Annual Guardianship Plan, and a Guardian of the Property must file an Annual Accounting.

A Guardian is required to obtain court approval (by court order) prior to taking certain actions. The Guardian's attorney must draft a Petition for Authorization to Act for the court's consideration in each instance.

The approximate cost to open a guardianship, which includes court costs, the examining committee fees, and attorney's fees, range from approximately \$5,000.00 to \$7,500.00 or more. Thereafter, the guardianship fees and costs can range from \$300.00 to over \$2,500.00 per year. Our rate for guardianship matters is \$400.00 per hour.

About our firm...

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Michael W. Porter, Esquire, has been engaged in the practice of law primarily in the areas of Guardianship, Probate & Estate Administration, Trusts, Estate Planning, and Real Estate Law since his admission to the Florida Bar in 1986. He maintains strong community ties, and is committed to the pursuit of excellence.

You will find that all members of our staff will communicate effectively and demonstrate the strictest personal and professional ethics as well as the utmost concern for our clients.