

FLORIDA GUARDIAN ADVOCATE LAW AND INFORMATION

(Guardian Advocate of the Person only)

*Eighteenth Judicial Circuit
Brevard County, Florida*



**THIS GUIDE DOES NOT CONSTITUTE LEGAL ADVICE AND IS INTENDED MERELY TO SERVE AS A
RESOURCE.**

*Please consult with your attorney for legal advice.
Please be aware that the law may change and you should consult with your attorney for
assistance.*

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GUIDE FOR THE PROCESS OF APPLYING TO BE A GUARDIAN ADVOCATE FOR A PERSON WITH A DEVELOPMENTAL DISABILITY

What is a Guardian Advocate?

Parents no longer have the legal authority to make decisions for their children after they turn 18 years of age. Guardian Advocacy is a process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property. This is accomplished without having to declare the person with a developmental disability incapacitated. Guardian Advocate appointments are governed by section 393.12, Florida Statutes, as well as Chapter 744, Florida Statutes.

All Florida Statutes may be viewed online at: www.leg.state.fl.us/statutes/

The Florida Probate Rules are available online at: <https://www.floridabar.org/rules-ethics/>

Who is developmentally disabled?

Under section 393.063(12), Florida Statutes, a person with a “developmental disability” means “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”

What if the person with a developmental disability lacks the capacity to make any decisions?

Section 393.12(2)(a), Florida Statutes, states that a Guardian Advocate may be appointed if the person with a developmental disability lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property, or if the person has voluntarily petitioned for the appointment of a guardian advocate.

If the person lacks the capacity to make any decisions about his or her care, it may be more appropriate for the court to appoint a plenary guardian who is authorized to act on the person’s behalf in all matters. The process of appointing a plenary guardian requires the court to determine that the person is incapacitated, and the person petitioning to become a guardian must have an attorney.

What are the powers and duties of a Guardian Advocate?

A Guardian Advocate for a person with a developmental disability shall have the same powers, duties, and responsibilities required of a guardian under Chapter 744, Florida Statutes, and those defined by the judge. These powers and duties are listed in Section 744.361, Florida Statutes. They include but are not limited to: filing an initial plan and annual reports; making provisions for medical, mental health, dental and personal care of the person with a developmental disability; making residential decisions on behalf of the person with a developmental disability; advocating on behalf of the person with a developmental disability in institutional and other settings; and making financial decisions on behalf of the person with a developmental disability. A Guardian Advocate need not be the caregiver of the person with a disability.

Do I need an attorney to become a Guardian Advocate?

The process of becoming a Guardian Advocate of a person with a developmental disability does not require the hiring of an attorney. During the Guardian Advocacy proceedings, the Court will appoint an attorney for the person with a developmental disability to ensure that his or her best interests are protected. The attorney will need to meet face-to-face with the person with a developmental disability. If the person with a developmental disability is deemed to be indigent, the attorney will be provided at no cost from the Office of Criminal Conflict & Civil Regional Counsel or, in the case of a conflict, from a registry of qualified attorneys. If the person with a developmental disability is not deemed to be indigent, a private attorney will be appointed from a rotating list of qualified attorneys. The attorney will charge customary fees that may be paid out of the assets of the person with a developmental disability.

If there is property involved, other than Social Security benefits or other government payee programs, the person seeking to become a Guardian Advocate of the person and the property *must* hire an attorney. These property rights include, but are not limited to: a pending lawsuit, estate matter, or other income or property right coming to the person with a developmental disability. The Court can expand the description of property rights by Petition and Order.

Who may serve as a Guardian Advocate?

Any resident of the State of Florida who is 18 years old and of sound mind is qualified to act as a Guardian Advocate. In addition, a non-resident may serve if he or she is related to the person with a developmental disability by blood, adoption or law according to section 744.309(2), Florida Statutes.

The court may appoint any person whom it considers fit, proper, and qualified to act as guardian whether or not that person is related to the person with a developmental disability. However, the court gives preference to a person who:

- Is related by blood or marriage to the person with a developmental disability;
- Has relevant educational, professional or business experience;
- Has the capacity to manage the finances involved; or

- Has the ability to meet the requirements of the law and the unique needs of the individual.

The court shall also consider the wishes expressed by a person with a developmental disability as to who shall be appointed guardian or the wishes of the next of kin (closest living relatives) of the person with a developmental disability if the person with a developmental disability cannot express a preference.

Who may NOT serve as a Guardian Advocate?

No person who has been convicted of a felony can be appointed to act as a Guardian Advocate. Furthermore, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in section 39.01, Florida Statutes, and section 984.03(1), (2), and (37), Florida Statutes, or who has been found guilty of, regardless of adjudication, or entered a plea of no contest to any offense prohibited under section 435.04, Florida Statutes or under any similar statute of another jurisdiction can be appointed to act as a Guardian Advocate.

Additionally, a person who provides substantial services to the person with a developmental disability in a professional or business capacity or is a creditor of the person with a developmental disability, may not be appointed Guardian Advocate and retain that previous professional or business relationship. A person may not be appointed as Guardian Advocate if he or she is an employee of any person, agency, government, or corporation that provides service to the person with a developmental disability in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed person with a developmental disability or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interest of the person with a developmental disability.

A provider of health care services to the person with a developmental disability, whether direct or indirect, may not be appointed the Guardian of the person with a developmental disability, unless the court specifically finds there is no conflict of interest with the best interest of the person with a developmental disability.

Do I have to submit to a criminal background and credit history investigation?

Yes. Section 744.3135(1), Florida Statutes, requires all Guardian Advocates of the person to submit to a level 2 criminal background screening and credit history investigation *at their own expense*.

You will need to contact Brevard County Sheriff's Office to make arrangements for the level 2 criminal background screening. Fingerprinting services are provided at each precinct as well as the Criminal Investigation Building. The public fingerprinting is conducted on various days and times depending on the precinct. Please consult the Brevard County Sheriff's website for exact times and locations: <http://www.brevardsheriff.com> You will need to provide them with the ORI number assigned to Brevard County. As of November 2016, the ORI number for Brevard County is FL005064Z. Remember to bring a government issued photo ID at the time of fingerprinting.

After your fingerprints are scanned, the Sheriff's Office will give you instructions to log in to the Federal Department of Law Enforcement (FDLE) website. You will be prompted to submit an additional payment to the Federal Department of Law Enforcement (FDLE). Please contact the FDLE for the exact amount, it is approximately \$40.00. FDLE will send the results of the fingerprint scan to the Clerk of the Court in Brevard County.

To obtain the credit history investigation you will need to obtain a current credit report from one of the three credit bureaus (Equifax, Experian, Transunion). You may obtain a free credit report from the following websites: <http://www.creditkarma.com> and <http://www.annualcreditreport.com>. Once you have obtained your credit report you must file it in your guardian advocate case.

Will I be required to receive instruction or training?

Yes. Each person appointed to be a Guardian Advocate must complete the required number of hours (as of 2016, eight hours) of instruction and education within four months after his or her appointment. The training must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

A.O. 22-17-B contains a list of approved courses for Brevard County on guardianship education:

<http://brevardclerk.us/administrative-orders?ID=d9258bca-3cd9-4330-9d91-860f722b23ae>

The court may, in its discretion, waive some or all the training requirements or impose additional requirements. The court will make its decision on a case-by-case basis considering the experience and education of the Guardian Advocate, the duty assigned to the Guardian Advocate, and the needs of the person with a developmental disability.

Will I be required to file reports to the court regarding the person with a developmental disability?

A Guardian Advocate must file an Initial Report within 60 days of appointment, pursuant to section 744.362, Fla. Stat. The Initial Guardianship Report usually consists of an Initial Guardianship Plan and verified Inventory. However, if the proposed Ward has no property, or if the filing of an Inventory and/or Accounting are waived, the Accounting/Inventory portion of the Initial Report is not required. The Initial Report for a guardian of the person must include an Initial Guardianship Plan.

Please refer to section 744.363, Fla. Stat. regarding what needs to be included in the Initial Plan

In addition, a Guardian Advocate *must* file an Annual Plan *each year*. The Annual Plan must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month.

Example: Imagine that the month that you were appointed a guardian is July. Your annual guardianship plan would need be filed with the court no later than October 30 of each

year. The Annual Plan would cover the period of August 1, 20__ to July 31, 20__. Also remember that you need to include a physician report with the annual report which is dated within 90 days of the day that you file the annual report.

Please refer to section 744.3675, Fla. Stat. regarding what needs to be included in the Annual Plan.

If a Guardian Advocate wishes to move the person with a developmental disability out of Brevard County, unless the move is to a county adjacent to Brevard County, he or she must get court approval for the change of residence pursuant to section 744.1098, Florida Statutes.

When do I file a petition to be appointed Guardian Advocate?

In order to avoid the gap between the child's 18th birthday and the appointment of a Guardian Advocate, the petition may be initiated within 180 days of the child's 18th birthday. The filing fee payable to the Clerk of the Court for the filing of the petition for appointment of Guardian Advocate of the person is \$235. The petitioner is also responsible for payment of the attorney's fees for the attorney appointed to represent the person with developmentally disabilities.

The court may waive the filing fees and payment of costs of attorney's fees upon an application for determination of indigent status. (**See Form G and instructions**). If the person with developmental disabilities is 18 years of age, the Clerk of Court will use their income and assets to determine indigent status. However, if the person with developmental disabilities is a minor, the Clerk of Court will use the petitioner's income and assets to determine indigent status.

Can the developmentally disabled person petition for restoration of his/her rights?

Yes, the developmentally disabled person or any interested person may file a suggestion of restoration of rights and must also include the evidentiary support for the request. The suggestion must state that the person with developmental disabilities is currently capable of exercising some or all the rights given to the Guardian Advocate. See section 393.12(12), Fla. Stat. and FL Probate Rule 5.681 for further information.

How do you become a Guardian Advocate?

First: Complete all paperwork to file with the probate clerk at any of the locations of the Brevard Clerk of Court. The paperwork is to be used for a person with a developmental disability who resides in Brevard County.

➤ Form A- Application for Appointment as Guardian Advocate

- ❖ This form asks for basic information about the person requesting to be appointed Guardian Advocate including education, employment history, and other relevant information.
- ❖ An application for each proposed Guardian Advocate must be filled out.

➤ **Form B- Notice of Petition for the Appointment of Guardian Advocate (one original)**

- ❖ This form will be given to the person with the developmental disability through the court appointed attorney to notify him or her that a petition has been filed to determine his or her capacity and seek appointment of a Guardian Advocate of his or her person.
- ❖ This notice must also be given to the next of kin of the person with a developmental disability, if any; a health care surrogate designated by the person with a developmental disability pursuant to an advance directive under Chapter 65, if any; an agent designated by the person with a developmental disability under a durable power of attorney, if any; and any other persons as the court may direct.

Next of kin means those persons who would be heirs of the person with a developmental disability, including lineal descendants of the person with a developmental disability.

➤ **Form C -Petition for Appointment as Guardian Advocate of the person**

- ❖ This form requests information regarding your reason for becoming a Guardian Advocate.
- ❖ This form asks for information about the person with the developmental disability and his or her capacity to make decisions.
- ❖ Attach the medical records, school records, individual support plan, individual education plan, and any other professional reports, documenting the condition and needs of the person with the developmental disability.

➤ **Form D- Order Appointing Attorney and Elisor (2 copies)**

- ❖ This form is necessary to the proceedings. The Court will appoint an attorney to represent the person with a developmental disability within 3 days after a petition has been filed.
- ❖ The person with a developmental disability may substitute his or her own attorney for the one appointed by the court.

➤ **Form E- Oath of Guardian Advocate, Designation and Acceptance of Resident Agent (one original)**

- ❖ This form is to ensure that the Proposed Guardian Advocate will faithfully perform his or her duties, if selected, and confirms that all the information before the court in this proceeding is true.
- ❖ This form designates the Resident Agent, the person who shall receive service of process of notice of documents concerning the Guardian Advocate, if any. The Resident Agent must be a resident of the county where the court case is pending pursuant to Fla. Prob. R. 5.110. An Oath of Guardian Advocate, Designation and Acceptance of Resident Agent for each Guardian Advocate is required.

- **Form F- Notice of Confidential Information Within Court Filing (one original)**
 - ❖ This form is a required form to ensure confidential information of the person with a developmental disability is protected and kept private.

- **Form G- Application for Determination of Civil Indigent Status**
 - ❖ **This form is optional.** It is *only needed* if the person with a developmental disability cannot afford the filing fees. According to Florida Statute §57.082, an applicant is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services. If the person with a developmental disability is found indigent, the filing fees will be waived.
 - ❖ There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.

Second: File the following paperwork and envelope *with postage* at any of the Brevard Clerk of Court offices:

- Letter to the Clerk of Court
- Form A- Application for Appointment as Guardian Advocate
- Form B- Notice of Petition for the Appointment of Guardian Advocate and 3 copies of the original Notice of Petition for the Appointment of Guardian Advocate
- Form C- Petition for Appointment as Guardian Advocate of the Person and 3 copies of the original Petition for Appointment as Guardian Advocate of the Person
- Form D- Order Appointing Attorney and Elisor and 3 copies of the original Order Appointing Attorney
- Form E- Oath of Guardian Advocate, Designation and Acceptance of Resident Agent
- Form F- Notice of Confidential Information Within Court Filing
- Form G- Application for Determination of Civil Indigent Status
 - *The filing fee for Guardian Advocate is \$235.00 as of November 2015. If you cannot afford the fees, file an application for determination of civil indigent status (Form G)*
 - One large self-addressed stamped envelope with *sufficient postage* for the return of copies of documents

Keep copies of all the documents you file.

The following is contact information for the Brevard Clerk of Court, Probate Division:

The Brevard Clerk of the Court, Probate Division
Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, FL 32940-8006
Phone: (321) 637-5413 extension 59390
E-mail: ProbateGuardianshipgroup@brevardclerk.us

The following is contact information for the Brevard County 18th Judicial Circuit Probate/Guardianship Staff:

Becky Reed
Case Manager Supervisor
Phone: (321) 637-5304
E-mail: becky.reed@flcourts18.org

Angela Dion
Case Manager
Phone: (321) 637-5304
E-mail: angela.dion@flcourts18.org

Ashley Beck
Case Manager
Phone: (321) 637-5304
E-mail: ashleybeck@flcourts18.org

How to file electronically: From the website <https://www.myflcourtaccess.com>, click on “File Now,” and from the registration menu at the bottom of the screen select “Self-Represented Litigant.” Follow the instructions for registration. Please note that each form must be scanned and uploaded separately. The court will not accept multiple forms in a single uploaded document. Make sure the e-mail address you provide is one that you check regularly, as correspondence from the court will be directed to that address. If you find the ePortal too difficult to use, you should file the forms at the courthouse as directed above.

Third: Fulfill the Level 2 Criminal Screening Requirements and Credit History Investigation. (See information provided on page 3 of this Guide)

Fourth: Contact the assigned judge’s judicial assistant to schedule a hearing.

Fifth: When documents are returned to you, mail two copies of the following documents to the assigned attorney for the person with a developmental disability:

- Application for Appointment as Guardian Advocate (*Form A*)

- Notice of Petition for the Appointment of Guardian Advocate and Appointment of Standby Guardian Advocate (*Form B*) (this form will include the date of the hearing)
- Petition for Appointment as Guardian Advocate of the Person (*Form C*)
- Order Appointing an Attorney and Elisor (*Form D*)
- Oath of Guardian Advocate, Designation and Acceptance of Resident Agent (*Form E*)

And

- Provide a copy of the above documents to the following persons, if any:
 - The next of kin of the person with a developmental disability.
 - The health care surrogate designated by the person with a developmental disability pursuant to advance directives.
 - An agent designated by the person with a developmental disability under a durable power of attorney.

Sixth: Schedule an appointment as soon as possible with the attorney appointed to represent the person with a developmental disability to meet you and the person with the developmental disability.

Seventh: Attend the Scheduled Hearing

Bring the following forms with you to the Hearing:

- **Form H- Order Appointing Guardian Advocate of the person**
 - ❖ Complete this form prior to the hearing. You will be asked to provide this form to the Judge for his or her signature if you are appointed as Guardian Advocate.
- **Form I- Letters of Guardian Advocacy of the person**
 - ❖ Complete this form prior to the hearing. You will be asked to provide this form to the Judge for his or her signature if you are appointed as Guardian Advocate.

At the hearing, the facts of the petition will be presented to the Judge. The Judge will decide whether or not to appoint a Guardian Advocate. The person with a developmental disability should attend the hearing if he or she is able to travel.

Eighth: Fulfill the Education Requirements

See information provided on page 4 of this guide.

Ninth: After you have been appointed a Guardian Advocate

File the following form with a self-addressed, stamped envelope with the court:

- **Form J- Initial Guardian Advocacy Plan of the person**
 - ❖ This form asks for information about how the Guardian Advocate plans to care for the person with a developmental disability. It must be filed with the Court within 60 days of appointment as Guardian Advocate. Copies of the form must be sent to

the person with a developmental disability and the attorney for the person with a developmental disability. See information provided on page 4 of this guide.

Tenth:

- **Form K- Order Approving Initial Guardian Advocacy Plan of the person**
 - ❖ You will receive a Clerk’s Report to Court indicating if the Initial Guardian Advocate Plan has been approved. If the initial plan has been approved by the clerk, you must file the proposed Order approving the initial plan with the court with a self-addressed stamped envelope. If the initial plan was not approved, you will be required to file an amended initial guardianship plan with the court.

Eleventh: Submit an Annual Plan each year

File the following form with a self-addressed, stamped envelope with the court:

- **Form L- Annual Guardian Advocacy Plan (Including Physician Report)**
 - ❖ **This form is mandatory and must be filed each year** within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. See information provided on page 4 of this guide.

- **Form M – Order approving Annual Guardian Advocacy Plan**
 - ❖ You will receive a Clerk’s Report to Court indicating if the Annual Guardian Advocate Plan has been approved. If the annual plan has been approved by the clerk, you must file the proposed Order approving the annual plan with the court with a self-addressed stamped envelope. If the annual plan was not approved, you will be required to file an amended annual guardianship plan with the court.

List of Guardian Advocate Forms

1. Letter to Clerk
2. Form A - Application for Appointment as Guardian Advocate
3. Form B - Notice of Petition for the Appointment of Guardian Advocate
4. Form C - Petition for Appointment as Guardian Advocate of the Person
5. Form D - Order Appointing Attorney and Elisor
6. Form E - Oath of Guardian Advocate, Designation and Acceptance of Resident Agent
7. Form F - Notice of Confidential Information Within Court Filing
8. Form G - Application for Determination of Civil Indigent Status
9. Form H - Order Appointing Guardian Advocate of the person
10. Form I - Letters of Guardian Advocacy of the person
11. Form J - Initial Guardian Advocacy Plan of the person
12. Form K - Order Approving Initial Guardian Advocacy Plan of the person
13. Form L - Annual Guardian Advocacy Plan (Including Physician Report)
14. Form M - Order Approving Annual Guardian Advocacy Plan
15. Administrative Order 22-17-B