

FLORIDA GUARDIAN ADVOCACY of PERSON GUIDE

*Eighteenth Judicial Circuit
Seminole County, Florida*



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

This guide does not provide information on Florida Guardian Advocacy of the Property.

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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Why do you need Guardian Advocacy of Person?

A parent no longer has the legal authority to make decisions for their child after the child turns 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 Advocacy appointments are governed by Florida Statute §393.12, Florida Statute Chapter 744 and Florida Probate Rules, Part I and III. All Florida Statutes may be viewed online at [The 2021 Florida Statutes](#). The Rules of Procedure for these matters are found at [Florida Probate Rules](#).

Who is developmentally disabled?

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.”¹

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.²

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. The person petitioning to become a plenary guardian must have an attorney pursuant to [Florida Probate Rules](#).³

¹ Fla. Stat. § 393.063(12) (2021).

² *Id.* § 393.012(2)(a).

³ *See* Fla. Prob. R. 5.030(a).

What are the powers and duties of a Guardian Advocate of the Person?

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 court as a person appointed to help a person with developmental disability meet essential requirements for health and safety, and to take action necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care.⁴ The powers and duties are listed in Section [744.361](#), *Florida Statutes*.⁵

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. The proposed Guardian Advocate of the *person* can represent themselves in court.

However, the person with developmental disability is required to have an attorney represent them in court. 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. The court shall initially appoint a private attorney who shall be selected from the attorney registry on a rotation basis. If the person with a developmental disability is deemed to be indigent, the attorney will be provided at no cost. If the person with a developmental disability is not deemed to be indigent, 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, a guardian advocacy of the *property* must be established for the guardian advocate to be able to make decisions concerning the property and make financial decisions. The person seeking to become a Guardian Advocate of the property *must* hire an attorney pursuant to Section [393.12\(2\)\(b\)](#), *Florida Statutes*.⁶

This guide does NOT provide any guidance or forms concerning the appointment of Guardian Advocate of the property. The guide only addresses the appointment of Guardian Advocate of the Person.

⁴ Fla. Stat. § 744.102(12)(b) (2021).

⁵ *Id.* § 744.361.

⁶ *Id.* § 393.12(2)(b).

Who may serve as a Guardian Advocate of Person?

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*.⁷

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. According to Section [744.312\(2\)](#), *Florida Statutes*, 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.⁸

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](#) 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*, (level 2 screening standards) or under any similar statute of another jurisdiction can be appointed to act as a Guardian Advocate.^{9,10,11}

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

⁷ *Id.* § 744.309(2).

⁸ *Id.* § 744.312(2).

⁹ *Id.* § 39.01.

¹⁰ *Id.* § 984.03(1), (2), and (37).

¹¹ *Id.* § 435.04.

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 investigation?

Yes. Section [744.3135\(1\)](#), *Florida Statutes*, requires all Guardian Advocates of the person to submit to a level 2 criminal background screening *at their own expense*.¹²

You can contact Seminole County Sheriff office at (407) 665-6600 to make arrangements for the level 2 criminal background screening. The SCSO offers public fingerprinting by appointment only on Mondays & Thursdays, excluding holidays, at the Sheriff's Office main building located at 100 Eslinger Way in Sanford, FL. Calendar appointments are now available at: [SCSO Public Fingerprinting Appointment Calendar](#) at www.seminolesheriff.org. Only one person per time slot is allowed, and there are a limited number of appointments available per date. Only Seminole County Citizens or Employees of a Seminole County Business may participate in this service.

You will need to provide them with the ORI number assigned to Seminole County. As of June 2022, ***the ORI number for Seminole County is FL059054Z***. The current cost is \$5.35. The Sheriff's office accepts cash, money orders or credit cards for a small additional fee. Remember to bring your driver's license or identification card with you.

After your fingerprints are scanned, the sheriff's office will give you a *control number* and instructions to login to the Federal Department of Law Enforcement (FDLE) website. You need to follow the instructions listed in the "Civil Applicant Payment System" (CAPS). The instructions will tell you to enter your control number and submit a payment of \$37.25 on the website. Once the payment is accepted, a CAPS authorization page will be displayed. This receipt should be printed as documentation of your payment. FDLE will send the results of the fingerprint scan to the Clerk of the Court in Seminole County.

There are other law enforcement and private agencies which will provide the finger printing screening service, if you choose not to contact the Seminole County Sheriff's Office.

¹² *Id.* § 744.3135(1).

Do I have to submit a credit report to the court?

Yes, you are required to submit a credit history investigation to the court.

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 2022, 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.

A course on guardianship education is available through Seniors First. You can register for the course online at Seniors First's [website](#). You can obtain additional information by contacting Seniors First at (407) 723-1375 or email guardianshipclass@seniorsfirstinc.org. As of 2022, the course cost is \$100 and presented by zoom.

[Rule 5.625](#) of the Probate Code requires each guardian to file with the court within 4 months after issuance of letter of guardian advocate, a notice of completion of the guardian education requirements. The contents of the notice are explained in this Rule.¹³

The court may, in its discretion, waive some or all of 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 of Person must file an Initial Report within 60 days of appointment, pursuant to section [744.362](#), *Florida Statutes*.¹⁴

The Initial Plan must include the provision of medical, mental, social and personal care services for the welfare of the developmentally disabled adult, place and kind of residential setting best suited for his/her needs, application of health and accident insurance, any physical and mental examinations necessary to determine his/her medical mental health treatment needed and list of any preexisting orders not to resuscitate or advance directives pursuant to section [744.363](#), *Florida Statutes*.¹⁵

¹³ Fla. Prob. R. 5.625.

¹⁴ Fla. Stat. § 744.362 (2021)

¹⁵ *Id.* § 744.363.

In addition, a Guardian Advocate *must* file an *Annual Plan each year*, pursuant to rule [744.367\(1\)](#), *Florida Statute*.¹⁶ 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 advocate 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 report from a physician or an advanced practice registered nurse, who examined the person no more than 90 days before the beginning of the applicable reporting period.

If the guardian fails to timely file the annual guardianship report, the judge may impose sanctions which may include contempt, removal of the guardian, or other sanctions provided by law in rule [744.3685](#).¹⁷

The Annual Plan must include information concerning the residence of the person with a developmental disability, the medical and mental health conditions, treatment and rehabilitation needs of the person with a developmental disability, the social condition of the person with a developmental disability and other information listed in rule [744.3675](#).¹⁸

If a Guardian Advocate wishes to move the person with a developmental disability out of Seminole County, unless the move is to a county adjacent to Seminole County, he or she must get prior court approval for the change of residence pursuant to rule [744.1098](#).¹⁹ You, however, must notify the court within 15 days after relocation of the person if the relocation is to an adjacent county.

How much does it cost to file a Guardian Advocacy in court and what can I do if I cannot afford the filing fee?

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 representing the person with developmental disabilities upon an application for determination of indigent status. If the person with developmental disabilities is 18 years of age, the Clerk of Court will use their income

¹⁶ *Id.* § 744.367(1).

¹⁷ *Id.* § 744.3685.

¹⁸ *Id.* § 744.3675.

¹⁹ *Id.* § 744.1098.

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 Petitioner request the court to appoint a Standby Guardian?

Yes, the Petitioner can request the court for the appointment of a Standby Guardian to assume their duties immediately on their death, removal, or resignation. Within 20 days after the assumption of duties, the Standby Guardian Advocate must petition for confirmation of the appointment, file their oath, and submit to a criminal history record check and credit history investigation.

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 Rule [5.681](#) of the Florida Rules of Probate procedure for further information.²⁰

How do you become a Guardian Advocate?

First: Complete all paperwork to file with the probate clerk at the Seminole County Juvenile Justice Center, 190 Eslinger Way, Sanford, FL 32773. The paperwork is to be used for person with a developmental disability, who resides in Seminole 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 and one copy)**
 - ❖ 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;

²⁰ Fla. Prob. R. 5.681.

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 (one original and three copies)**
 - ❖ 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 eligible developmental disability and needs of the person with the developmental disability.

- ❖ **Form D- Order Appointing Attorney and Elisor (one original and one copy)**
 - ❖ 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 proposed Guardian Advocate *cannot* afford the filing fees. According to section [§57.082](#), *Florida Statute*, 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 you are found indigent, the filing fees will be waived.²¹

- ❖ 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.

The 2022 Poverty Guidelines 200% Level	
Persons in family	Poverty guideline
1	\$27,180
2	\$36,620
3	\$46,060
4	\$55,500
5	\$64,940
6	\$74,380
7	\$83,820
8	\$93,260
For families with more than 8 persons, add \$9,440 for each additional person.	

Note: These guidelines change each year.

Second: File the following paperwork and envelope *with postage* at the Clerk of Court Probate Division, located at the **Seminole County Juvenile Justice Center, 190 Eslinger Way, Sanford, FL 32773.**

- Form A- Application for Appointment as Guardian Advocate
- Form B- Notice of Petition for the Appointment of Guardian Advocate and 1 copy of the original Notice of Petition for the Appointment of Guardian Advocate and Appointment of Standby 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 1 copy 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, if applicable

²¹ *Id.* § 57.082.

- *The filing fee for Guardian Advocate is \$235.00 as of June 2022. 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 Clerk of Court, Probate Division:

The Clerk of the Court, Probate Division
 Seminole County Juvenile Justice Center
 190 Eslinger Way
 Sanford, Florida 32773
Phone: (407) 665-4328
Fax: (407) 330-7193

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.” [The Self Represented Litigant – Filing a New Case](#) video will show you have to e-file a new case with the court. Follow the instructions for registration. The [E-Portal Registration Video](#) will show you how to create your user account. 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 email 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 or watch [Getting Started for the Self-Represented Litigant](#). This video will give you a brief overview and basic information.

Third: Fulfill the Level 2 Criminal Screening Requirements.

See information provided on page 3 of this guide.

Fourth: After return of documents from the Probate Clerk.

If you have not received documents from the Probate Division within two weeks of the date the documents were filed, call the Probate Division. The phone number for the Seminole County Courthouse Probate Division is (407) 665-4328.

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 and Appointment of Standby Guardian Advocate (*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.

Fifth: 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. Discuss scheduling a court hearing if necessary.

Sixth: 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.

Seventh: Fulfill the Education Requirements within 4 (four) months of being appointing and file Notice of Completion by Guardian Education Requirement. (Form O)

See information provided on page 4 of this guide.

Eighth: 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.

Ninth:

➤ **Form K- Order Approving Initial Guardian Advocacy Plan of the person**

- ❖ Once the Initial Guardian Plan is reviewed, the clerk will send you a Clerk's Report and then you file this form (Form K) with the court.

Tenth: Submit an Annual Plan each year

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

➤ **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.
- ❖ This report must include information concerning the residence of the person with a developmental disability, the medical and mental health conditions and the treatment and rehabilitation needs of the person with a developmental disability, and the social condition of the person with a developmental disability.
- ❖ Each plan must also address the issue of restoration of rights to the person with a developmental disability.
- ❖ *You must attach a report from the physician of the person with a developmental disability. The Physician's Report must have been issued within 90 days of the filing of the report.*
- ❖ *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 report 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.*

➤ **Form M – Order approving Annual Guardian Advocacy Plan**

- ❖ You will receive a clerk's report 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.

• **Form N – Designation of Current Mailing and E-Mail Address**

• **Form O – Notice of Completion of Guardian Education Requirements**

List of Guardian Advocate Forms

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

REMEMBER to submit your credit history, investigation report, and complete your level 2 (two) criminal background check.