

The elder guardianship system in Florida



Family
Florida law gives family members priority when it comes to elder guardianship. But if family members disagree, or are considered unfit for any reason, a professional guardian is usually named instead. Often family members are not notified of a guardianship hearing until it is too late to intervene.



Petitioner

Anyone can petition the court to find an elder incapacitated and name a guardian. It can be the Florida Department of Adult Protective Services, which investigates anonymous tips alleging elder abuse or neglect. It can also be a family member, or a facility providing care for the elder.



Judge

Probate court judges handle guardianships along with a caseload of trusts and estates. They have power to make decisions about a person's capacity without having to meet that person. They also approve all fee petitions and many of the guardian's actions, including a plan submitted annually.



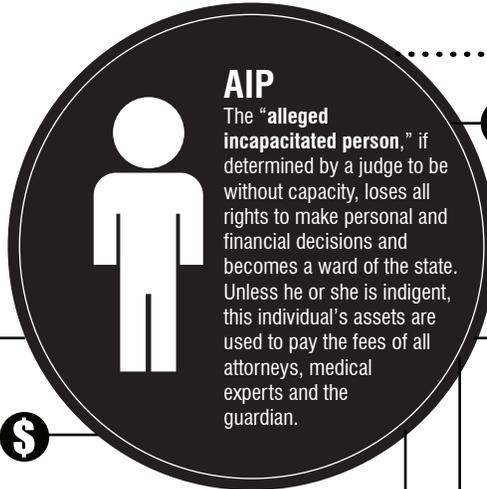
Guardian

The judge can appoint a "plenary guardian" — who makes all decisions for the rest of the ward's life — or a limited guardian — who might be responsible only for finances, or be a "guardian of the person," responsible for medical care, housing and other matters of daily life.



Petitioner's attorney

This attorney gets the ball rolling by filing the paperwork, usually also arranging for the examining committee to visit the elder and locating a guardian who agrees to take the case. This lawyer remains involved until the guardian takes over and the case is closed.



Guardian's attorney

The guardian is represented by an attorney while the case remains open, asking the court to approve such actions as the liquidation of assets, and handling any legal questions.



Examining committee

In Florida, the panel typically consists of a court-approved medical doctor, nurse and social worker, who must agree on a finding of incapacity. In Sarasota County, the doctor usually is paid \$325 and the others get \$200 for the visit and report. They may also testify in court hearings.



Ward's attorney

The judge appoints an attorney to represent the prospective ward. The Florida guardianship statute gives an individual the right to choose an attorney, but in practice the judge can reject that choice in favor of someone who specializes in guardianships. It is rare for the initial court-appointed attorney to ask a judge later to re-open the case or restore an individual's rights.



Additional attorneys as needed

If a guardianship case is complex — and the ward has enough assets to pay for them — lawyers can be retained by the family or ward to reopen the case and try to reverse a judge's orders. The petitioner and the guardian or their attorneys can also hire additional legal representation to handle aspects of the case, at the ward's expense.