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Florida Guardian Advocacy: A Streamlined Approach to Establishing a Guardianship Over Individuals with Developmental Disabilities

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Guardianship

In Florida, guardianship is a legal process in which a court determines whether an individual has the legal capacity to manage their affairs. If the court concludes that the individual lacks legal capacity, a guardian may be appointed to make decisions on their behalf. This is a very involved process requiring the court to appoint a committee of three professionals to examine the individual, and ultimately for the court to adjudicate the individual as incapacitated.

Fortunately, Florida has a streamlined guardianship process designed to protect and support individuals with developmental disabilities who are over 18 and may lack the ability to make important decisions for themselves. This unique legal framework allows family members, caregivers, or other concerned parties to assume a legal role to help manage the affairs of someone with special needs without stripping away more rights than necessary and without adjudicating the individual legally incapacitated.

Known as a "guardian advocacy," this process is designed to be less adversarial and more supportive, recognizing that many individuals with developmental disabilities can make some decisions independently, but may need and benefit from assistance in other areas of their life.

Who may qualify for a Guardian Advocacy?

Guardian advocacy was created specifically for individuals diagnosed with a "developmental disability" as defined by Florida Statute §393.063. This includes conditions such as:

- Intellectual disability
- Cerebral palsy
- Autism

- Spina bifida
- Down syndrome
- Phelan-McDermid syndrome
- Prader-Willi syndrome

Additionally, this diagnosed developmental disability must have manifested before the age of 18 and must significantly impair the person's ability to make decisions regarding education, healthcare, finances, or living arrangements.

Often, this diagnosis is already established well before the individual turns 18 years old, and parents or family members have been deeply involved in the individual's life. Upon a developmentally disabled individual turning 18 years old, medical care providers and financial institutions may no longer communicate with the family member, making legal authority a necessity.

Who Can Serve as a Guardian Advocate?

Guardian Advocates are typically: parents, family members, close friends, or professionals appointed by the court. A guardian advocate must be at least 18 years old, a Florida resident (or meet specific requirements if residing out of state), and capable of fulfilling the legal duties of a guardian. In order to be appointed, a guardian advocate must also complete a background check, credit report, and take the state required guardianship course.

How Do You Become a Guardian Advocate?

A parent or family member who is seeking to become a Guardian Advocate must file a petition in Circuit Court where the developmentally disabled individual resides. This petition sets forth the nature and effect of the developmental disability, and the reason that a guardian advocate is needed. An Application for Appointment and Oath of Guardian Advocate must also be filed by the individual seeking to be appointed.

The court will review these documents, as well as supporting medical documentation and evidence. The court will then hold a hearing, at which the judge may ask questions or hear from the individual and other parties involved. At the conclusion of this hearing, if the court concludes it is appropriate, a guardian advocate is officially appointed and granted authority.

What Does a Guardian Advocate Do?

Depending on the developmentally disabled individual's needs, the court will delegate rights and authority to the guardian advocate. The guardian advocate will then exercise that authority on behalf of the developmentally disabled person. This authority may include:

- The right to make medical decisions
- The right to choose living arrangements
- The right to manage educational plans
- The right to handle finances

The goal of guardian advocacy is to provide enough support to protect the individual, without unnecessarily limiting their independence. A guardian advocate must act in the best interests of the individual, and always be mindful of protecting that individual's autonomy whenever possible.

Once appointed, a guardian advocate has ongoing reporting obligations to the court. These obligations are designed to ensure the rights and assets of the developmentally disabled individual are protected. The guardian advocate must file an annual report detailing the medical and personal care that is being provided, as well as filing an annual accounting of the use of any assets of the individual.

Conclusion

Florida Guardian Advocacy provides a vital safety net for adults with developmental disabilities who need help navigating the world. It balances protection and autonomy, ensuring that individuals receive the support they need without unnecessary loss of rights. For families and caregivers, this legal tool offers peace of mind and a structured way to continue caring for loved ones into adulthood.

Before initiating the process, it's wise to consult with an attorney who specializes in guardianship law to ensure that Guardian Advocacy is the best fit for your family's unique needs.

Our Firm

Understanding the avenues and legal resources available when a loved one experiences cognitive decline is very important. At Lowndes, our guardianship and mental health attorneys have the experience to assist clients in handling these difficult situations.