Guardianship

by Tara S. Green, Clay County Clerk of Court and Comptroller

Why Guardianship Is Needed

Guardianship is a judicially supervised procedure designed as a last resort for protecting incapacitated persons, often elderly adults, who cannot manage their own affairs. Under Florida law, guardianship is appropriate only when less restrictive alternatives (such as powers of attorney, health care surrogates, or trusts) are insufficient or unavailable. Guardianship also provides essential oversight and monitoring through court involvement. Florida Clerks serve as a critical "check and balance," administratively assisting the courts with oversight and compliance monitoring.

The Clay County Clerk's Office prioritizes protecting vulnerable wards from exploitation, fraud, and neglect. Clerk auditors actively monitor guardianships, verify the location and welfare of wards when necessary, and ensure guardians fulfill their fiduciary duties.[1]

Types of Guardianship

Guardianships vary by scope and circumstances. Florida law recognizes several guardianship types, with two most common in Clay County:

- **Plenary Guardianship**
  A plenary guardian is appointed when a ward is adjudicated fully incapacitated, losing all delegable rights.[2] The guardian manages all aspects of the ward's financial affairs, healthcare, residence, personal care, and general well-being.
- **Guardian Advocate**
  Guardian advocates are appointed primarily for individuals with developmental disabilities (e.g., Autism, Down Syndrome, Cerebral Palsy), or voluntarily at the request of the individual in need.[3] Guardian advocates oversee personal care decisions, medical appointments, property management, or financial affairs based on court directives.

Other guardianship types include:

- Guardian of Property Only (financial management only).
- Guardian of Person Only (personal care decisions only).
- Limited Guardianship (partial rights removed based on specific needs).
- Guardianship of Minor (for minor inheriting more than $15,000 or minor with deceased parents).[4]

Parties in Guardianship Proceedings

- **Petitioner:** Initiates guardianship proceeding; Petitioner need not be the proposed guardian.
- **Ward:** Individual (adult or minor) lacking full capacity to manage their affairs.
- **Guardian:** Court-appointed fiduciary responsible for managing ward's property and/or personal care. Multiple guardians may be appointed if appropriate.
- **Clerk of Court:** Administers filings, hearings, compliance audits, and judicial oversight.
- **Judge:** Ultimate gatekeeper balancing protection with autonomy. Makes determinations on capacity, selects appropriate guardians, and addresses guardian misconduct to protect the ward's interests.

Filing Guardianship Cases

- Filed electronically via Florida Courts E-Filing Portal, assigned case numbers.[5]

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[1] Fla. Stat. § 744.368 (2024).
[2] Fla. Stat. § 744.102(9)(b) (2024).
[3] Fla. Stat. § 393.12 (2024).
[4] Fla. Stat. §§ 744.3021, 744.3031 (2024).
[5] Fla. R. Gen. Prac. & Jud. Admin. 2.525 (2024).

- Petitions to Determine Incapacity ($231 filing fee) must accompany Petitions for Appointment of Guardian (Person $235, Property $400).[6]
- Clerk schedules hearings: approximately 6 weeks out for Plenary Guardianships, 4 weeks for Guardian Advocate cases.
- Clerks draft initial court orders (appointing attorney, examining committee, notice of hearing).
- After incapacity is adjudicated, guardianship case (GA case number) proceeds with compliance monitoring.

Guardian Advocate Cases

- Filed electronically ($235 filing fee).
- Clerk schedules hearings; coordinates orders appointing counsel and notifying parties.[7]

Emergency Temporary Guardianship (ETG)

- ETGs filed directly with judicial assistant (not clerk); valid up to 90 days.[8]

Guardianship Compliance & Auditing

Clerk Compliance Auditors monitor statutory compliance, conduct audits, and verify guardians' accountability:

- **Initial Checklist:** Outlines required filings before hearing including fingerprinting and credit checks.[9]
- **Mandatory Guardian Education:** Required within 4 months of appointment (8-hour plenary/person-only; 4-hour property-only natural parents).[10]
- **Verified Inventory & Initial Guardianship Plan:** Filed within 60 days after Letters of Guardianship.[11]
- **Annual Plan & Annual Accounting:** Filed annually; due first day of fourth month following fiscal year-end.[12]

Auditors review all filings against Florida's Best Practices standards, issue written deficiency reports if needed, and submit Orders Approving or Disapproving filings to the court.

Enforcement & Remedies

To ensure timely compliance, auditors take graduated enforcement actions:

- **Past Due Notices:** Sent if documents not timely filed (20-day deadline).
- **Order to File & Order to Show Cause:** Issued by Court if compliance not achieved. Judge may require explanations, immediate filings, or removal of guardian for non-compliance.[13]
- **Requests for Information:** Issued by auditors to resolve incomplete filings.

Emergency Temporary Guardianship (ETG) Compliance

- ETGs expire by statute within 90 days after appointment or upon permanent guardian appointment, whichever occurs first.[14]
- ETG must file final report (Verified Inventory & Initial Plan) within 30 days of expiration.[15]

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[6] Fla. Stat. § 28.241; 744.3201(2) (2024).
[7] Fla. Stat. § 393.12(3)-(4) (2024).
[8] Fla. Stat. § 744.3031 (2024).
[9] Fla. Stat. § 744.3135 (2024).
[10] Fla. Stat. § 744.3145(2) (2024).
[11] Fla. Stat. § 744.362(1) (2024).
[12] Fla. Stat. § 744.367(1), 744.3675 (2024).
[13] Fla. Stat. § 744.368 (2024).
[14] Fla. Stat. § 744.3031(4) (2024).
[15] Fla. Stat. § 744.3031(9)(a) (2024).