

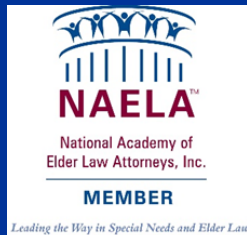
How to Become a Legal Guardian

And Then What?



Presented by:
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CAPE Resource Center
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FALCON LAW GROUP

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What we will cover

- What is a Guardianship
- Types of Guardianship
- How do you become a Guardian
- The Guardianship Order
- Basic Responsibilities
 - Dos and Don'ts
 - The Reporting Forms
 - Know The Programs
 - Your Questions



What is Guardianship?

- Legal authority to make decisions for another person and manage his/her affairs
- Guardianship of person, property or both
- NJ law provides for limited guardianship
- Guardianship is established through a court proceeding



Impact on Individual Rights

Person (the ward) loses legal rights and the ability to make many or all of his/her own decisions



Role of Parents



◆ Parents of children under 18 are considered “natural” guardians of their children

◆ Parents of children 18 or older are no longer considered guardians unless appoint legal guardians by the court



Children 18 and Over

- ❖ Children become legally emancipated at 18, *regardless of their physical or mental condition*
- ❖ If the child is incapacitated, parents must seek guardianship in order to have authority over the child's person and property



Requirements for Guardianship

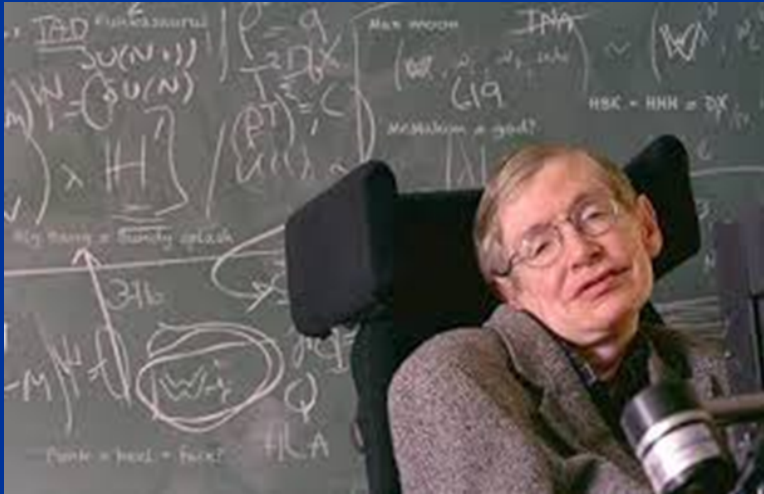
Person is likely to suffer harm because of:

- inability to provide for personal needs or property management
- inability to understand and appreciate the nature and consequences of such inability



Requirements for Guardianship

Disability \neq Incapacity



Types of Guardianship

Full Guardianship

- ✓ Guardian is given all rights of decision-making on behalf of the ward
- ✓ Can be guardian of the person, property or both

Limited Guardianship

- ✓ Guardianship Order specifically identifies the powers of the Guardian
- ✓ Ward retains decision-making authority for all other matters



Guardianship Process

Title 3B

- ❖ Petition and Order to Show Cause
 - ❖ Reason for proposed guardianship
 - ❖ Scope of authority requested
- ❖ Medical evidence of need for guardian (two physicians or one physician and one licensed practicing psychologist)
- ❖ Must file petition within **30 days** of 1st doctor visit
- ❖ Judge will appoint an attorney to represent the AIP
- ❖ Hearing and decision



Guardianship Process – Title 30

- Enrolled in Division of Developmental Disabilities (DDD)
- Required Documentation
 - Affidavit of NJ licensed physician or NJ licensed clinical psychologist and 1 of the following:
 - Certification from School District personnel with copy of latest IEP
 - Certification in Support of the Guardianship from a person with knowledge of functional capacity
 - Administrator of the DDD program
 - Another physician or psychologist
 - Licensed-care professional
- Must file petition within **180 days** of 1st doctor visit



The Guardianship Order

GUARDIANSHIP TYPE: [NAME1] is an incapacitated person, and is unfit and unable to govern herself and manage her affairs.

This is a guardianship:

As to the **Person:** _____ General _____ Limited

As to the **Estate:** _____ General _____ Limited

Limited Guardianship: [NAME1] is able at this time to govern herself and manage her own affairs with respect to the following areas: [LIST AREAS]

Check if applicable:

_____ The subject of this guardianship is incapacitated as a result of a developmental disability



The Guardianship Order

GUARDIAN APPOINTMENT: [NAME2] and [NAME3] be, and hereby are appointed Co-Guardians of the Person and Estate of [NAME1] , and that Letters of Co-Guardianship of the Person and Estate be issued to [NAME2] and [NAME3] upon [their/his/her] (a) qualifying according to law (b) acknowledging to the Surrogate of [Name of County] County **completion of guardianship training** and receipt of the guardianship training guides, and (c) unless waived for extraordinary reasons, entering into a **surety bond** unto the Superior Court of New Jersey in the amount of \$_____, which bond shall contain the conditions set forth N.J.S.A. 3B:15-7 and R. 1:13-3. The Court shall approve the bond as to form and sufficiency



The Guardianship Order

In exercising the authority conferred by this Judgment, [NAME2] and [NAME3], as Co-Guardians, shall:

- Ascertain and **consider those characteristics** of [NAME1] which define her uniqueness and individuality, including but not limited to likes, dislikes, hopes, aspirations and fears;
- **Encourage** [NAME1] to express preferences and participate in decision-making;
- **Give appropriate deference** to the expressed wishes of [NAME1];
- **Protect** [NAME1] from injury, exploitation, undue influence and abuse;
- **Promote** [NAME1]'s right to privacy, dignity, self-determination and respect; and,
- Make reasonable efforts to **maximize opportunities** and individual skills to enhance self-direction.



The Guardianship Order

GUARDIAN LIMITATIONS: The authority of the Co-Guardians is limited as follows, and all limitations shall be stated in the Letters of Co-Guardianship:

___ The Co-Guardians of the Estate may not alienate, mortgage, transfer or otherwise encumber or dispose of **real property** without court approval

___ Other



The Guardianship Order

The Co-Guardian(s) appointed hereunder shall be considered the personal representative(s) under the Standards for Privacy of **Individually Identifiable Health Information** (“Privacy Rule”) issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), and shall have full and complete access to all records of [NAME1]



The Guardianship Order

INVENTORY: The Co-Guardians shall **file with the court within 90 days, an inventory** of all of [NAME1]'s property and income. Said inventory shall be available for inspection by any part in interest in this guardianship action, upon request to the _____ County Surrogate's Court to review the inventory.



The Guardianship Order

REPORTING AS TO THE PERSON:

[NAME2] and [NAME3], Co-Guardians of the Person, are hereby directed to file [] each year [] every other year or [] _____ a report of the **well-being** of [Name], along with a Report of Guardian Cover Page.

OR

___ The filing of a report of well-being is hereby waived for the reasons stated on the record.



The Guardianship Order

REPORTING AS TO THE ESTATE (PROPERTY):

[NAME2] and [NAME3] , Co-Guardians of the Estate, are hereby directed to file each year every other year or

- _____, along with a Report of Guardian Cover Page.
- Formal accounting (presumptive if guardianship estate valued over \$5,000,000)
- Comprehensive accounting (presumptive if guardianship estate valued between (\$1,000,000-\$5,000,000)
- EZ accounting (presumptive if guardianship estate valued under \$1,000,000)
- Copy of the Social Security Representative Payee report (presumptive if a guardian is also representative payee for Social Security benefits and [NAME1] has no other assets or income.)



The Guardianship Order

The report or **reports are to be filed not later than** ___ days after the anniversary date of this Judgment with the [Name of County] County Surrogate. The report or reports shall be filed by the Surrogate and shall be made available by the Surrogate to any part in interest entitled to review pursuant to R. 1:38-3(e), as well as to the following parties or persons:



The Guardianship Order

[NAME2] and [NAME3] , Co-Guardians of the Person and Estate, are hereby directed to advise the [Name of County] County Surrogate within __ days of **any changes in the address** or telephone of himself or herself or [NAME1] , or within 30 days of [NAME1] 's death or of any major change in status or health. If [NAME1] dies during the guardianship, the Co-Guardians will notify the [Name of County] County Surrogate in writing and forward a copy of the death certificate upon receipt.



Responsibilities - Person

DO:

- Advocate for the ward's independence
- Discuss decisions with the ward
- If you don't know the ward's preferences or the preferences are potentially harmful, make decisions in the ward's best interest
- Arrange services for the ward's health, education, and welfare



Responsibilities - Person

DO:

- Make medical decisions for the ward, considering:
 - conditions that make treatment necessary;
 - incapacitated person's preference;
 - risks and benefits of all alternatives;
 - time considerations for taking action;
 - less restrictive alternatives; and
 - additional opinions, if helpful.



Responsibilities - Person

DO:

- Visit the ward at least once every three months unless otherwise ordered by the court.
- Arrange appropriate activities / social opportunities
- File reports of well-being if required
- Inform the Surrogate of any major changes in the health or welfare of the ward
- Notify the Surrogate of any changes to your or the ward's address
- Inform the Surrogate of the ward's death



Responsibilities - Property

DO:

- Open a separate guardianship bank account
- Get a tax identification number for the bank account
- Maintain records of guardianship account transactions
- Identify and inventory ward's assets and liabilities
- File an initial inventory with the court and send copies to interested parties, if required



Responsibilities - Property

DO:

- File periodic accountings if required
- Keep original papers (insurance policies, deeds) in a safe and secure location.
- If a surety bond is required, pay premiums to maintain the bond



Responsibilities - Property

DON'T:

- Accept gifts from the incapacitated person without court approval
- Give gifts from the guardianship estate without court approval
- Take payment beyond the commissions authorized by statute
- Delegate your guardianship duties to anyone unless authorized by statute



The Reporting Forms

The Inventory Form:

Form CN 11800 – EZ Accounting

FIRST INVENTORY MUST BE FILED WITHIN 90 DAYS OF APPOINTMENT

The Report of Well Being

Form CN 11798 – Guardianship – Report of Well Being,

Report of Guardian Cover Page

Form CN 11797 – Report of Guardian Cover Page



Know The Programs

- Supplemental Security Income (SSI)
- Medicaid
- Social Security Childhood Disability Benefits (CDB/DAC)
- Division of Disability Services (DDS)
- Division of Developmental Disabilities (DDD)
- Division of Vocational Rehabilitation Services (DVRS)
- ABLE Account
- Catastrophic Illness in Children Relief Fund (CICRF)



Guardianship Alternatives

- Conservatorship
- Power of Attorney
- Representative Payee
- Advanced Directive for Health Care



The best and most beautiful things in the world cannot be seen or even touched, They must be felt with the heart...



Questions

- Successor Guardian
 - How
 - Who (corporate guardians?)
- When should you start the process
- Other options to Guardianship
- Separate Guardians for person and property?
- Move to another state or country?
- Other Questions



THANK YOU FOR YOUR ATTENTION!

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