

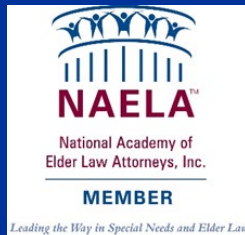
# So You've Become a Legal Guardian

## *Now What?*



Presented by:  
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Courtesy of:  
Bergen County Special Services  
CAPE Resource Center  
May 21, 2025



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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



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# Impact on Individual Rights

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



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# 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



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# 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 to have authority over the child's person and property



# Requirements for Guardianship

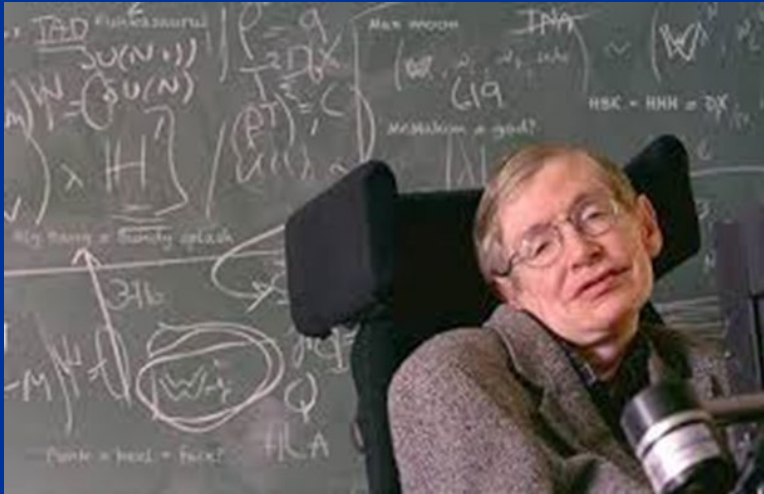
Person is likely to suffer harm because of:

- 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 <b>Person</b> :	_____	General _____	Limited _____
As to the <b>Estate</b> :	_____	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]



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# The Guardianship Order

Check if applicable:

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

Firearms: Pursuant to 18 U.S.C. 922(g)(4), [NAME] does not retain the right to possess firearms.



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# 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 **not later than 30 days after the date of this judgment**, (b) acknowledging to the Surrogate of [Name of County] County **completion of guardianship training** and receipt of the guardianship training guides, and (c) acknowledging compliance with any background screening policy for proposed guardians promulgated by the Administrative Director of the Courts, and (d) unless waived for extraordinary reasons, entering into a surety bond unto the Superior Court of New Jersey in the amount of \$0.00, 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 his/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.

■ The Co-Guardians of the Estate may not exercise authority over any property or income of the incapacitated person in the excess of \$\_\_\_\_\_ without court approval.

■ \_\_\_\_\_  
\_\_\_\_\_



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# 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

The Co-Guardian(s) shall have an ongoing duty to comply with any **background screening policy** promulgated by the Administrative Director of the Courts by disclosing any changes to criminal or civil judgment history on the Report of Guardian Cover Page filed with the report(s) required in paragraphs 8-10 below.



# The Guardianship Order

**INVENTORY:** The Co-Guardians shall **file with the court within \_\_ days, an inventory** of all of [NAME1]'s property and income. Said inventory shall be available for inspection by any party 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:

■ [NAME] and [NAME], Co-Guardians of the Person, shall file annually 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.



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# 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, , except where co-guardian(s) are exempt from filing pursuant to 42 U.S.C. 405(j)(3)(D)).)



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# The Guardianship Order

**REPORTING AS TO THE ESTATE (PROPERTY):**

OR

 The filing of a report of a Periodic Accounting is hereby waived for the reasons stated on the record.

If an informal accounting is ordered, said Periodic Accounting does not replace or satisfy the duty to file and bring on for approval a formal accounting as required by law or as ordered by the court.



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# The Guardianship Order

The report(s) indicated in paragraphs \_\_ and/or \_\_ above is/are to be **filed not later than \_\_ days after the anniversary date of this Judgment** with the [Name of County] County Surrogate. The report(s) 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:

\_\_\_\_\_,  
and the reference in this Judgment shall constitute a showing of a special interest as required by R. 1:38-3(e) for the purpose of reviewing such reports.



# 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 \_\_ 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.





# The Guardianship Order

Any power of attorney previously executed by [NAME] be and hereby is revoked. Any advance directive for healthcare previously executed by [NAME] is voided as to proxy designation(s), but [NAME] and [NAME] shall be guided by the preferences expressed in such advance directive.



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# 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;
  - ward'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

[https://www.njcourts.gov/sites/default/files/forms/11800\\_grdnshp\\_ez\\_accting.pdf](https://www.njcourts.gov/sites/default/files/forms/11800_grdnshp_ez_accting.pdf)

***FIRST INVENTORY MUST BE FILED WITHIN 90 DAYS OF APPOINTMENT***

## The Report of Well Being

Form CN 11798 – Guardianship – Report of Well Being,

[https://www.njcourts.gov/sites/default/files/forms/11798\\_grdnshp\\_rpt\\_well\\_being.pdf](https://www.njcourts.gov/sites/default/files/forms/11798_grdnshp_rpt_well_being.pdf)

## Report of Guardian Cover Page

Form CN 11797 – Report of Guardian Cover Page

[https://www.njcourts.gov/sites/default/files/forms/11797\\_grdnshp\\_rpt\\_grdn\\_cover\\_pg.pdf](https://www.njcourts.gov/sites/default/files/forms/11797_grdnshp_rpt_grdn_cover_pg.pdf)



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# 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)



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



# THANK YOU FOR YOUR ATTENTION!

Raymond J. Falcon Jr., Esq.



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