

GUARDIANSHIP IN VIRGINIA: Focus on Children Attaining 18 Years of Age

Presented by
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WHAT IS GUARDIANSHIP?

Va. Code §64.2-2000, *et seq.*

- Court-supervised proceeding
- Court-created fiduciary relationship

An incapacitated person's control over his or her own medical / personal affairs is transferred to another person / persons.

TYPES OF GUARDIANSHIP

- Uncontested (our focus)
- Temporary, Standby, Limited
- Contested (not our focus)

GUARDIANSHIP

(addresses medical concerns)

VS.

CONSERVATORSHIP

(addresses financial concerns)

WHEN GUARDIANSHIP SHOULD BE CONSIDERED

- Child with special needs is at least 17 1/2 years of age
- Child, upon turning age 18, will not have capacity to execute advance directive / medical power of attorney

THRESHOLD ISSUE #1

- Statutory definition of “incapacitated person” (known as Respondent)
- Va. Code §64.2-2000

OTHER ISSUES

- Who should file Petition?
- Who will pay the fees?
- Who should be Guardian?

THRESHOLD ISSUE #2

Is/Are the Guardian(s)
nominated in Petition
proper and suitable
person(s) to serve?

GUARDIANSHIP PETITION

- Required Contents
- Evaluation Report
- Private Addendum

GUARDIANSHIP NOTICE

- Required Wording
- 14-point Conspicuous
Bold Print

GUARDIAN *AD LITEM* ATTORNEY

(Court-Appointed Attorney)

- Visits and serves Respondent
- Advises him or her of rights
- Investigates; reviews records, including I.E.P.
- Represents Respondent's best interests

ADDITIONAL NOTICE AND CERTIFICATION

- Required mailing by
Petitioner's attorney
- Required filing by
Petitioner's attorney

GUARDIAN AD LITEM'S REPORT

- Findings
- Recommendations

PETITIONER'S PROPOSED ORDER

- Required Contents
- Must be timely filed with Court
- Copy must be provided to GAL
- 14-point Conspicuous Bold Print

GUARDIANSHIP HEARING

- Proceeding held in accordance with pandemic-related Orders and local rules of Court
- Attendance by Respondent may or may not be required
- Proceeding typically occurs on Friday morning in Prince William County Circuit Court

GUARDIANSHIP HEARING (continued)

Two-Pronged Determination:

1. Is Respondent incapacitated?
2. Is proposed Guardian appropriate?

Evidence Must Be Clear & Convincing.

COURT ORDER

- Findings/Required Provisions
- Bonding with/without surety
- Award of GAL's fees
- Other Provisions, as Needed

GUARDIAN QUALIFICATION

- Deputy Clerk administers Oath
- Guardian is bonded
- Deputy Clerk provides Instructions

GUARDIAN AS FIDUCIARY

- Duties, Powers and Liabilities
Va. Code §64.2-2019
- Required Annual Report
Va. Code §64.2-2020

GUARDIANSHIP IN VIRGINIA

For more information,
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