



Serving as a Guardian: An overview of your duties and responsibilities as a court appointed guardian

Training developed by the
Guardianship Monitoring Program of the Office of the Public Guardian
State of Delaware

Introduction

If you are completing this training, you are either in the process of petitioning the Court of Chancery to become someone's guardian or you have recently been appointed guardian of someone's person and/or property.

After the training is complete, you will have a clear understanding of your duties and responsibilities as a court appointed guardian.

Throughout this exercise, you will be referred to as “guardian” and the person for whom you are guardian will be referred to as the “disabled person”.

The authority of the Court of Chancery

In the State of Delaware, the Court of Chancery has the authority (12 *Del. C. Ch. 39*) to appoint a guardian of the person and/or property of a disabled person.

“**Disabled person**” means an individual 18 years of age or older who is unable to care for their person and/or property by reason of physical and/or mental impairment.

A “**guardian**” is a person, or persons (co-guardians), appointed by the Court to make medical and/or financial decisions for a disabled person.

The two types of guardians (You could be either one or both)

- **Guardian of the Person**

This guardian makes decisions about the personal and medical care of the disabled person.

Responsibilities may include:

- Deciding where the disabled person will reside
- Resolving medical issues and providing consent for medical treatment(s) as needed
- Advocating on behalf of the disabled person
- Attending care plan meetings, if applicable, and making medical/dental appointments

- **Guardian of the Property**

This guardian makes decisions about the financial welfare of the disabled Person.

Responsibilities may include:

- Handling the disabled person's bank accounts, investments, personal property and real estate
- Applying for social security benefits for the disabled person
- Filing taxes on behalf of the disabled person if applicable
- Filing an inventory 30 days after your appointment and yearly accountings with the Court if applicable

Substituted Judgment & Best Interest

As a guardian, you are in a position to make decisions for the disabled person in one of two ways; using either substituted judgment or the best interest standard.

Substituted judgment should be your first choice unless following the disabled person's wishes would cause them substantial harm or when you cannot establish the disabled person's preferences or goals.

Substituted judgment: Making the same decision the disabled person would make if they had the mental capacity to do so.

How would you know what decision the disabled person would have made? Do the research and find out. Your job is to figure out what the disabled person's preferences were (if they made them known) when they had capacity to decide for themselves.

- Discuss each decision with the disabled person and listen to their preferences (Try to put it in a way they can understand) and allow them to give you their reasons behind their preference. (i.e. religious, cultural, etc.)
- Speak with the disabled person's family and friends and ask them if they ever heard, or know, the disabled person's preferences to medical treatments, burial methods, etc.

Substituted Judgment & Best Interest

Making decisions using substitute judgment may be easier for those of you who are guardians of an elderly disabled person because they were capable, at one point, of understanding how their decisions (and preferences) would impact their lives. Most likely, they discussed their wishes with others which makes it easier for you, as their guardian, to use substituted judgment on their behalf.

When an individual has been disabled since birth, it may be more difficult to know their wishes as they may not have ever clearly expressed them. In this situation, or in situations where the disabled person's preferences may cause them serious harm or injury, you would be making your decision based upon what you believe to be in the disabled person's best interest.

Best Interest: When making a decision you are to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the disabled person. You must also consider past practices and evaluate reliable evidence of all likely choices.

**Sometimes a decision made in a disabled person's best interest differs from their wishes*

Requirements, Responsibilities & Duties of a guardian

As a court appointed guardian of the person or person and property, each year on the anniversary date of your appointment (when the final order was signed by the judge) you are required to file an Annual Update and Medical Statement (AUMS) with the Court.

The AUMS can be found on the Court's website under the forms tab:
www.courts.delaware.gov/chancery/guardianship

It is your responsibility as guardian to complete this requirement each year; you should not rely on the Court to remind you.

Do not wait until the AUMS is due to notify the Court of changes in your, or the disabled person's, geographical information. Contact the Court immediately and provide them with your, or the disabled person's, new address, telephone #, etc.

Requirements, Responsibilities & Duties of a guardian

If you are appointed guardian of the disabled person's property and the requirement for opening a guardianship account is not waived in the final order, you must open a guardianship account and file a Proof of Compliance (POC) within 30 days.

The POC can be found on the Court's website under the forms tab:
www.courts.delaware.gov/chancery/guardianship

It is your responsibility as guardian to complete this requirement within 30 days; you should not rely on the Court to remind you.

The court requires all of the disabled person's funds to be placed in a guardianship account with a Delaware bank. This account will have a special title that will be listed in the order appointing you as guardian and will limit your access to the funds except when otherwise determined by the Court.

Requirements, Responsibilities & Duties of a guardian

If you are appointed guardian of the disabled person's property and the requirement for the inventory and accounting are not waived in the final order, you must file the inventory within 30 days of your initial appointment. If you need more time, you can file an extension request with the Court within the 30 day time period.

The inventory can be found on the Court's website under the forms tab:
www.courts.delaware.gov/chancery/guardianship

If you are appointed guardian of the disabled person's property and the requirement for the inventory and accounting are not waived in the final order, you will have to file an annual accounting on the anniversary date of your appointment (when the final order was signed by the judge) **unless the Court determines otherwise.**

It is your responsibility as guardian to complete this requirement each year; you should not rely on the Court to remind you.

Requirements, Responsibilities & Duties of a guardian

Prepare yourself throughout the year for filing the annual accounting by keeping all receipts for purchases made with the disabled person's funds.

You must SEPARATE your own purchases from those of the disabled person's. It is best not to use your money to purchase items for the disabled person or to use the disabled person's money to purchase items for yourself.

For example: If you go shopping and you purchase items for yourself, or your household, out of your own funds and pick up a few things for the disabled person, have the clerk ring up your items separately so you end up with two receipts, yours and the disabled person's.

You must also keep all bank statements related to the disabled person's bank accounts and investment accounts, if applicable. This information will be needed as support documentation for each accounting you file.

If you have difficulty filing the accounting you should consider hiring an accountant to assist you or you can contact the Register in Chancery and ask for guidance.

Remember!

- **All** of the documents you are required to file as a guardian can be found on the Court of Chancery's website.
www.courts.delaware.gov/chancery/guardianship
- **Annual Update and Medical Statement** (filed each year)-Every guardian is required to file this.
- **Proof of Compliance** (filed 30 days after appointment)-A guardian of the property has to file this if the requirement was not waived in the final order.
- **Inventory** (filed 30 days after appointment)- A guardian of the property has to file this if the requirement was not waived in the final order.
- **Guardianship Accounting Packet** (filed each year)- A guardian of the property has to file this if the requirement was not waived in the final order.

You can also obtain a copy of the handbook for guardians from the website if you need a refresher on your duties as guardian.

Requirements, Responsibilities & Duties of a guardian

If the disabled person passes away, you must notify the Court within 10 days.

If the disabled person happens to improve and/or recover sufficiently from his or her disability to where they can once again handle their own affairs, you can file a petition to terminate due to recovery with the Court.

If you would like to make something (i.e. important information) part of the official record, you must put it in writing and file it with the Court.

Requirements, Responsibilities & Duties of a guardian

If you are unable to continue serving in your role as guardian or you would like to add a co-guardian to assist you in your role as guardian, you must contact the Court's staff at the Register in Chancery and discuss your situation with them.

If you have someone (i.e. a family member or close friend) in mind that you would like to serve as a successor (replacement) guardian in case you are unable to do so one day, please discuss your case with them often and remind them to contact the Court, if you have not already done so, when the time comes for them to serve*.

**All individuals applying to become a guardian must meet the Court's requirements before they can be appointed.*

Actions requiring prior Court approval

Although guardians have the ability to make many decisions without court involvement, there are still several instances where a guardian is required to make application (file a petition) to the Court for prior approval.

EXAMPLES:

- You cannot buy real estate with the disabled person's funds without first obtaining Court approval.
- You cannot sell a disabled person's interest in real estate without first obtaining Court approval.
- A guardian cannot withdraw funds in excess of the monthly allotment without first obtaining Court approval.
- A guardian cannot give monetary gifts to others or borrow money from the disabled person's funds without first obtaining Court approval.

The above are only a few examples, **ALWAYS** contact the Court and speak with staff in the Register in Chancery if you have questions regarding your authority as guardian.

Failure to Comply

- If, as a guardian of person, property or both, you fail to comply to all of the rules of the Court of Chancery and the State of Delaware you may:
 - Be removed as guardian
 - Be referred to the Guardianship Monitoring Program for investigation
 - Be sanctioned by the Court of Chancery by having a judgment issued against you
 - Be referred to the Department of Justice for investigation
 - Be referred to local law enforcement for investigation
 - Be referred to Adult Protection Services (APS) or the Division of Long Term Care Resident Protection (DLTCRP) for investigation

Helpful Information

You should always have available a copy of the order that appointed you guardian as proof that you are able to make decisions on behalf of the disabled person.

If you do not live with the disabled person, attempt to visit with him or her as often as possible.

You may be required to track down important papers related to the disabled person such as: A birth certificate, drivers license, social security card, military discharge paperwork, insurance documents, bank accounts, safe deposit box information, burial information, pension benefits, veterans benefits, etc.

Locating these documents, making photocopies and keeping them in a safe place will come in handy down the road as you continue to serve in your role as guardian.

Resources

- The website for the Court of Chancery is:
www.courts.delaware.gov/chancery/guardianship
- Division of Health and Social Services (DSAAPD) Division of services for aging and adults with physical disabilities; Contact to download a copy of the Guide to Services for Older Delawareans and Persons with Disabilities.
NCC- (302) 391-3500 Kent/Sussex- (302) 424-7310 Toll Free 1-800-223-9074
or their website: www.dhss.delaware.gov/dsaapd or (ADRC) The Aging and Disability Resource Center for other helpful information:
<http://www.delawareadrc.com>
- Delaware Helpline (Statewide Information for health and human services programs) Toll Free 1-800-464-4357
- Dial 2-1-1 for other social services in the State of Delaware
- To Report Elder Abuse dial 911 or contact 1-800-223-9074