

Guardianship of Incapacitated – General Information

Q: How does a guardianship of incapacitated person case generally flow through the court process?

A: This is a basic overview of a guardianship proceeding. Once the petition and required documents are filed, the court will schedule the case for a hearing. In certain situations an expedited hearing may be requested. The court will appoint an attorney to represent the proposed ward unless the proposed ward already has an attorney. The court will issue orders of notice scheduling the hearing and advising of the date/time for the hearing. The proposed ward's attorney will provide the proposed ward with the notice and others will receive the notices by first class mail. The proposed ward must attend the court hearing unless his/her attendance is excused by the judge. At the hearing, the petitioner has the burden to prove beyond a reasonable doubt that the proposed ward is incapacitated and in need of a guardian. The hearing is not open to the public. If the guardianship is granted, the court will issue an order appointing the guardian and setting forth the powers of the guardian. Thereafter, the guardian will be required to file additional documents and reports during the pendency of the guardianship.

Q: What are some of the terms used in guardianship of incapacitated person cases?

A: **Proposed Ward** - the "proposed ward" is the person for whom a guardianship is sought. Once the guardianship has been ordered by the court, the person becomes the "ward."

Order of Notice – this is a hearing notice prepared by the court which lets all who are entitled to notice of a proceeding know that the proceeding will happen and when/where it will happen. It is sent by mail.

Incapacitated - a person is generally deemed to be "incapacitated" when the court determines that the functional limitations of the person have declined to the point where the person's ability to participate in and perform minimal activities of daily living is not present.

Beyond a reasonable doubt - this is the same standard of proof required in criminal cases and is a higher standard of proof than either preponderance of the evidence or clear and convincing evidence. It generally means that a case must be proven to the extent that there could be no "reasonable doubt" in the mind of a "reasonable person" that, in the case of a guardianship, that the proposed ward is incapacitated and in need of a guardian.

Jurisdiction – jurisdiction refers to which court may hold a particular type of proceeding. Guardianships are within the jurisdiction of the Circuit Court Probate Divisions.

Guardianship over person – this refers to a guardianship over only the person of the ward and not the property or financial affairs of the ward. The guardian is given decision making authority over only the person of the ward, for example where the ward resides and what medical treatment will be provided.

Guardianship over the estate – this refers to a guardianship over the property of the ward. The guardian is given decision making authority over the property and financial affairs of the ward, for example bank accounts and real estate.

Guardianship over person and estate – this refers to a guardianship over both the person and property of the ward and the guardian is given decision making authority over both.

Q: What information should I have available to file a Guardianship of Incapacitated Person petition?

- A:
1. Name and address information of the petitioner(s).
 2. Name and address information of the proposed guardian(s).
 3. Name of person or institution having care or custody of the proposed ward if the proposed ward is in an institution (i.e. hospital, nursing home).
 4. Proposed ward's date of birth.
 5. The names and address of adult spouses, parents, children and siblings of the proposed ward.
 6. Copy of power of attorney(s) if one exists.
 7. Living will if one exists.
 8. A description and approximate value of all property owned and income of the proposed ward.
 9. The facts showing the need for guardianship.
 10. Names and addresses of any adults, other than the proposed guardian who will be living in the same household as the proposed ward.

Q: Are guardianship cases confidential to the public?

A: Court hearings are not open to the public unless requested by a party to the case and allowed by the judge.

All documents filed with or issued by the court in guardianship cases under RSA 463 or RSA 464 are confidential except:

- (A) A Certificate of Appointment of Guardian;
- (B) An Order on Appointment of Guardian;
- (C) A Motion/License to Sell Real Estate or Personal Property in Guardianship or Conservatorship;
- (D) A Motion/License to Mortgage Real Estate;
- (E) A Return/Notice of Sale;
- (F) An Appointment of Resident Agent.

The public may have access to and make copies of the above documents. Access to any other document by the general public is restricted and may be viewed only upon order of the court for good cause shown.

Q: How long will this take?

A: If an expedited hearing is requested, and the court finds that there are sufficient circumstances (such as the need for urgent medical care) a hearing will be scheduled to occur quickly. If an expedited hearing is not requested or not granted by the court, a hearing will be scheduled in approximately 30 days depending upon the court's schedule and other factors. An order will be issued shortly thereafter.

Q: What is a "petition?"

A: A "petition" is a court form which begins a court case, in this situation a guardianship of an incapacitated person.

Q: What does "incapacitated" mean?

A: A person is generally deemed to be "incapacitated" when the court determines that the functional limitations of the person have declined to the point where the person's ability to participate in and perform minimal activities of daily living is not present.

Q: Who is the “proposed ward?”

A: The “proposed ward” is the person for whom a guardianship is sought. Once the guardianship has been ordered by the court, the person becomes the “ward.”

Q: What does it mean to be “admitted to an institution?”

A: If the proposed ward is admitted to a hospital or nursing home, then this may be considered to be an “institution” for purposes of filing a guardianship petition.

Q: What does “estate” mean? Does this mean that the person has died?

A: No, in this situation the person (the proposed ward) must be living. In this context the word “estate” means the personal property, monies, stocks, real estate, etc. belonging to the proposed ward.

Q: What is an “authorized agency?”

A: An “authorized agency” is an agency which is licensed as a child placing agency under New Hampshire law (RSA Chapter 170-E).