

What if someone is seeking to obtain Guardianship over you and you object?

You need to call an attorney right away.

What rights does the Ward have once a Guardian is appointed?

- Safe and clean living conditions.
- Clothing and belongings cared for.
- Right to go to Court if Guardian unfit.
- Explanation of medical care and choices.

Is a Guardianship permanent?

Not always. A Guardianship can be removed if the Ward is no longer incapacitated. The Guardian can be changed if he/ she acts improperly or if he/she can no longer serve.



Additional information may be found at:

LawHelp.org/SC

South Carolina's guide to free legal resources

Elder Law Cases Accepted

- Guardianships
- Conservatorships
- Estate Probate Issues
- Healthcare Powers of Attorney
- Durable Powers of Attorney
- Living Wills
- Last Will and Testament
- Nursing Home Issues
- Other Issues Affecting Seniors

Other Legal Representation

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Printed June 2016



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South Carolina Legal Services

Balancing the Scales of Justice

**GUARDIANSHIPS:
CARING FOR and PROTECTING YOUR
INCAPACITATED LOVED ONES**



Our Mission

South Carolina Legal Services is a statewide law firm that provides civil legal services to protect the rights and represent the interests of low-income South Carolinians.

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What is a Guardian?

A Guardian is a person, institution, or agency appointed by the Probate Court to handle the personal matters for an adult who lacks the capacity to care for himself or herself.

What is a Ward?

A Ward is an adult who has been determined to be incapacitated by the Probate Court.

What is Incapacity?

An incapacitated person is someone who is impaired to the extent that (s)he cannot make or communicate responsible decisions because of mental illness, developmental disability, physical illness or disability, advanced age, chronic use of drugs or alcohol, or other causes.

Making bad decisions or having a disability does not necessarily mean that (s)he is incapacitated.

How do I know if I need to get Guardianship?

A Guardianship may be unnecessary if you are able to communicate with the doctors and are not having any difficulty getting the incapacitated person the care and treatment that (s)he needs.

Where do I go to get Guardianship?

A Guardianship action is filed in the Probate Court in the county where the incapacitated person lives.

What is the process for getting Guardianship?

It starts with the filing of a Summons and Petition, a filing fee, Doctor's Reports, a Visitor's Report, and a hearing. The Probate Court will also require the appointment of an attorney guardian ad litem to represent the alleged incapacitated during the Guardianship action.

What are the duties of a Guardian?

To make decisions for a Ward's health, care, comfort and to report to the Court each year about how your Ward is doing.

Who can be appointed as Guardian?

Anyone who is qualified can serve as a Guardian. However, there is a priority for appointment, which is followed unless there is a good reason to appoint someone else.

The priority is: a person named in a Power of Attorney, spouse, adult child, parent, other relative, or friend of the incapacitated adult.

What are the qualifications?

It requires that you are caring, respectful, patient, diligent, organized, easily accessible, and responsive to your Ward's needs.

You may not be qualified to be a Guardian if you are a convicted felon, on the sex offender registry, on the adult abuse registry, or have health or medical concerns of your own that will affect your ability to serve.

What are alternatives to Guardianship?

- Durable Power of Attorney (made while the person has capacity to make decisions)
- Case or Care Management
- Health Care Power of Attorney
- SC Adult Health Care Consent Act
- Protective Orders

What if the Ward has assets?

If the income the Ward receives is solely from Social Security then you can apply to be the Ward's Representative Payee. You can contact the Social Security Administration at 1.800.772.1213 for more information.

The Guardian makes provision for the person but does not handle assets.

If there are other assets that the Ward owns he/she may need a Conservator in addition to a Guardian. The Probate Court has a process for being appointed as Conservator.

Who to contact to seek Guardianship:

- Your attorney or the South Carolina Lawyer Referral Service at 1.800.868.2284
- If you can not afford an attorney, contact South Carolina Legal Services at 803.744.9430 or 1.888.346.5592.

