

**GUARDIANSHIP
HANDBOOK**



**Compliments of Greg Cain,
Morgan County Probate Judge**

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**PROBATE COURT OF MORGAN COUNTY
POST OFFICE BOX 848
DECATUR, ALABAMA 35602
256-351-4675**

To: Attorney of Record

Attached is the Handbook for Guardians. Provided also is a CERTIFICATE which shall be used to confirm that the appointed Guardian has reviewed the handbook information with their attorney.

At your convenience, and prior to the appointment of Guardian, please give this handbook to your client and review same with him/her. Please file with the Court the executed CERTIFICATE to verify that such review has been done.

Please note that the filing of the certificate with the Court is a pre-requisite to the issuance of Letters of Guardianship. If you have any questions, please do not hesitate to contact us.

Thank you for your assistance with this matter.

Greg Cain, Judge of Probate

IN THE PROBATE COURT OF MORGAN COUNTY, ALABAMA

IN RE: THE ESTATE OF

Case Number _____

Alleged Incapacitated

CERTIFICATE

I, Guardian of _____ do hereby attest and certify to the Probate Court that I have read and reviewed the foregoing Guardian's Handbook and discussed the provisions of said Handbook with my attorney and I understand all of the provisions contained herein.

Signed this _____ day of _____, 20____.

Guardian

Instructions: The petitioner is required to review the *Guardian's Handbook* with his/her attorney prior to the hearing on the petition to appoint a guardian so that the petitioner may have a basic understanding of the duties and responsibilities of becoming a Guardian. This certificate, properly executed, must be filed with the Court at the beginning of the hearing and before Letters of Guardianship are issued.

Introduction

You have been appointed Guardian of someone who is unable to handle his or her personal affairs. This is a very important position. Your responsibilities will require a large time commitment from you.

The Morgan County Probate Court has prepared this handbook to assist you in performing your duties as Guardian. The needs and circumstances of each person whom a Guardian serves are unique but the Handbook provides you with general information on the Guardian's duties and responsibilities. Most of the information is based on state law and Court rules. When an issue is not addressed by these sources, we have tried to establish good policy within the spirit of the law. The duties and responsibilities included in this handbook may not include all of the duties and responsibilities required by our Court. It is important to check with your attorney if you have any questions before taking action.

If you need legal advice or assistance in fulfilling your duties, you should consult with an attorney who is familiar with Guardianship procedures. The personnel of this Court are not permitted to provide legal advice or assist in completing documents for filing with the Court.

An important topic of this book is the powers you have as Guardian. Even though you have legal authority, there may be practical problems encountered in exercising that authority. For example, although you may have power to consent to medical treatment, it may be difficult to convince the individual to go to the doctor.

The procedures outlined in this handbook are subject to change without notice. This handbook references certain sections of the Guardianship statutes. Statutes are laws that have been enacted by the Alabama State Legislature. However, statutes are subject to change by the Legislature. If you have any concerns about the meaning or state of the law, consult with an attorney familiar with Guardianship law. The statutes referenced in this handbook, are those in effect as of May 9, 2023.

UNDERSTANDING GUARDIANSHIP

Being a Court-appointed Guardian is an important and honorable position. Always be aware of the fact that a Guardianship is a legal relationship that involves the Protected Person, the Morgan County Probate Court, and the Court-appointed Guardian.

The appointment of a Guardian marks a profound change in the legal and social status of the Protected Person. To minimize this loss, it is important that the Guardian make decisions that reflect the values and needs of the Protected Person. The primary responsibility of a Court-appointed Guardian is to ensure that the Protected Person's rights are protected and his/her best interests served. Because even a limited Guardian has been granted significant control over the Protected Person's personal decisions, it is critical that a Guardian take his or her legal responsibilities seriously, to always make decisions on behalf of the Protected Person that are in his or her best interest, and to seek Court instruction and authority whenever necessary.

WHAT IS A GUARDIAN?

A Guardian is a person appointed by the Court to have the care and management of a minor or of an incapacitated adult.

A Conservator of the estate makes decisions for the management of the estate, financial affairs, income and property of the Protected Person. These decisions may include the payment or dispute of bills and the investment of any excess assets.

Alabama law differentiates between a Guardian and a Conservator. A Guardian makes decisions involving the personal needs of the Protected Person. The practical responsibilities of a Guardian may include deciding where the Protected Person will live, how meals and daily care will be provided, how transportation will be arranged and how health care decisions will be made.

In some cases, both a Guardian and Conservator are needed for both the Protected Person's person and estate. The Court does not require these roles to be filled by the same person. One person can serve as Guardian and another person can serve as Conservator of the estate. In the case where there is a separate Guardian and Conservator a lot of communication is required to ensure the best interest of the Protected Person is maintained. Due to the overlapping duties it is often easier if one person serves as both Guardian and Conservator.

In addition, Alabama law also allows for a limited Guardianship. In some cases a Guardian with full authority to act is not necessary. The Court may appoint a limited Guardian to perform specific duties for a definite or indefinite period of time. This occurs when the Court determines that a Protected Person needs a Guardian for specified purposes, but is also capable of addressing some of the essential requirements for his or her health, care, safety etc. A limited Guardian may only perform those specific duties set forth in the order of Guardianship. The Protected Person retains control over all other aspects of the management of his or her estate.

Sometimes the Court will appoint an emergency temporary Guardian if it finds that an immediate need exists. The temporary Guardian has only those powers and duties specifically set forth in the order of appointment and the appointment lasts only a limited time, usually 30 days.

LETTERS OF GUARDIANSHIP

The Guardian will be issued Letters of Guardianship to show that the Guardian is authorized to act as the Guardian.

Additional copies of the Letters of Guardianship can be obtained from the Probate Court as needed. The Guardian should carry a copy of the Letters of Guardianship at all times. Most pharmacies, doctor's offices, and hospitals will want to see a copy of the Letters of Guardianship before you can act on behalf of the Protected Person.

In addition it is highly suggested that the Guardian maintain in their possession any important documents such as the Protected Person's picture ID and social security card.

PROTECTED PERSON

The person for whom a Guardian is acting is referred to as the "ward." More recently, the term "Protected Person" has come into use throughout the United States.

The Protected Person is the person for whom a Guardian or Conservator is appointed. A Protected Person is an adult, nineteen years of age or older, who has been found by a Court, because of mental or physical impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: to meet the essential

requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a Guardian.

GUARDIAN RESPONSIBILITIES

The Court controls the Protected Person's Guardian. The Court has delegated certain powers and duties to the Guardian. The Guardian is responsible to the Court and must obey all orders of the Court. The Court may remove a Guardian who fails to obey any order of the Court.

The Guardian of the person has many duties and responsibilities.

The Guardian is responsible for the Protected Person's personal needs. The primary responsibility of a Court-appointed Guardian is to ensure that the Protected Person's rights are protected and best interests served. The Guardian will not only make medical decisions for the Protected Person; in addition the Guardian will make arrangements for the Protected Person's food, clothing, and shelter consistent with the Protected Person's available financial resources. The Guardian will also assist the Protected Person in arranging appropriate educational and recreational opportunities.

In order to assure the best care for the Protected Person the Guardian should visit with or communicate with the Protected Person, health care providers, sitters, family members and other people in the Protected Person's life on a regular basis. The Guardian cannot respond to the Protected Person's personal needs if the Guardian does not have sufficient contact with the Protected Person to determine the Protected Person's personal needs. Failure to maintain sufficient contact with the Protected Person could result in the removal of the Guardian.

Whenever feasible, the Guardian should encourage the Protected Person to participate in decision-making, to act on his or her own behalf, and to develop or regain the capacity to manage his or her personal affairs.

When making decisions the Guardian should consider the express desires and personal values of the Protected Person when making decisions on his or her behalf. Always act in the Protected Person's best interest and exercise reasonable care, diligence and prudence.

Remember, the Protected Person is unable to protect his or her interests. Therefore, the Guardian is responsible for decisions on the Protected Person's behalf and to act in the Protected Person's best

interest. Final authority to make decisions rests with the Guardian (subject in certain cases to the Court's approval). However, the Guardian should allow the Protected Person to participate in decisions if the Protected Person is capable.

The Guardian is also encouraged to inform and consult with the Protected Person's close family members when making decisions for the Protected Person, if appropriate, and with an attorney. A few minutes of prior consultation may save many hours of dispute later and avoid costly Court intervention.

DECISION MAKING STANDARDS

Each time a Guardian makes a decision on behalf of a Protected Person the Guardian must follow the two-step process below.

First, try to use substituted judgment

Guardians must first try to use the substituted judgment standard of decision making. The Guardian has a duty to consult and abide by the Protected Person's known and previously expressed preferences – this is called the “substituted judgment” standard of decision making. Using the substituted judgment standard means that the Guardian must make a reasonable attempt to make the decision that the Protected Person would make if he or she were able.

To do this, the Guardian considers all reliable evidence of the Protected Person's express preferences, values and previous behavior. The Guardian should start by asking the Protected Person what he or she prefers, if possible. Next the Guardian should talk to those family members and friends who are familiar with the Protected Person's express desires and wishes before incapacity. The Guardian may also review any written evidence of the Protected Person's preferences, such as powers of attorney, wills, and letters.

When the Guardian tries to make a decision on behalf of the Protected Person using the substituted judgment standard, the Guardian must make the decision that he or she would have made, which may not be the decision that the Guardian would make for him or herself or even the choice that the Guardian would like to make for the Protected Person. Of course, if the use of substituted judgment in a particular instance would result in substantial harm to the Protected Person, it should not be used.

If substituted judgment is not possible, the “best interests” standard should be used

If the Protected Person is unable to understand the decision to be made or is unable to effectively communicate, and there are no past reliable expressions of preference, the Guardian should make the decision on the Guardian’s judgment of what would be in the Protected Person’s best interests. The “best interests” standard is what a reasonable man or woman, acting as a Guardian, would consider best after making a reasonable study of the situation.

When making any decision for the Protected Person the Guardian should try to recognize and protect as much as possible the needs and feelings of the Protected Person. Of course, the Guardian’s decisions must be realistic as well. The Protected Person’s financial resources and the Guardian’s own ability to provide what the Protected Person wants or needs are both factors that will influence decisions.

PLACE OF RESIDENCE

The Guardian should make all reasonable attempts to respect the Protected Person’s preferences and to work with the Protected Person and others whom he or she trusts or respects to address the Protected Person’s concerns and to reach an agreeable placement decision.

The Protected Person should remain in his or her home, if it is possible to make it safe and comfortable for them. To make the home safe and comfortable, the Guardian may have to work with the Conservator to change the locks so that no unauthorized person enters the home.

The Guardian may also have to work with the Conservator to have the home thoroughly cleaned to eliminate unsanitary or unsafe debris. The Guardian should contact the Conservator and make sure the local gas, electric, water, garbage, and telephone companies have been contacted to make sure these services at the home continue. It may also be necessary to make repairs or modifications to the home. Extensive and expensive repairs must be pre-approved by the Court and are paid out of the Protected Person’s assets by the Conservator.

If the Protected Person will be alone in the residence for more than brief periods of time, the Guardian may want to subscribe to an emergency medical response system. With such a system, help to the Protected Person is just a touch away.

Most Protected Persons require some assistance with day-to-day living. This assistance can range from someone to do simple errands (such as buying groceries once a week) up to full 24 hour nursing care.

If in-home assistance is needed, the Guardian must work with the Conservator to hire a person or an agency that is within the budget of the Protected Person.

Whether assistance is hired directly or through an agency, the Guardian is still responsible for establishing guidelines for the assistants and ensuring each assistant follows those guidelines.

At some point in time, it may no longer be feasible, due to physical or financial reasons, for the Protected Person to continue to live in his or her home. If this occurs, it is the guardian's responsibility to find a place for the Protected Person and arrange for the move. If a Conservator is involved arrangements must be made with the Conservator to pay for the placement. Before signing a written agreement for a new placement, it is good practice to have it reviewed by an attorney.

The Guardian is not personally liable for the Protected Person's costs just because they are his or her Guardian. The Guardian should refuse to sign any documents that state the Guardian is personally liable for debts or expenses of the Protected Person.

Even if the Protected Person is placed in a care facility, it remains the responsibility of the Guardian to make sure that the Protected Person receives appropriate health care, nutrition, grooming, recreation, and social stimulation. The Guardian should visit the facility periodically and regularly review the Protected Person's charge with the nursing shift supervisor to ensure that the Protected Person receives proper care.

In a limited Guardianship the Court may limit a Guardian's ability to force a Protected Person to move to or stay in a residential treatment facility against his or her will without a Court order. This includes placement in a nursing home, adult family home or assisted living facility. It may become necessary for the Protected Person to be admitted, however, if this becomes necessary the Court may set a hearing on the issue in which the Protected Person would be afforded rights similar to those in the Guardianship hearing, including the right to be present, the right to present evidence, and the right to be represented by an attorney.

HEALTH CARE

The Guardian is responsible for making decisions regarding the Protected Person's medical care and treatment. The Guardian must consent to any medical treatment before it is provided to the Protected Person, unless it is an emergency. Emergencies are situations where the Protected Person has a medical condition which, if not immediately diagnosed and treated, will lead to serious injury, disability or death.

If it is not an emergency, the Guardian's consent must precede any treatment. The Guardian should always act in good faith and base decisions on medical advice. Usually the Guardian will continue to use the health care providers the Protected Person has used in the past, provided they are qualified.

If the Protected Person suffers from a medical problem (such as Alzheimer's disease or alcoholism), the Guardian should educate him or herself about the illness, what is likely to happen and what can be done to reduce adverse effects.

Many Protected Persons have executed a living will or a durable power of attorney for health care. These documents specify what actions to take regarding prolonging life through life support systems. If you are confident that the Protected Person had the capacity to understand the documents when they were signed, you should respect his or her wishes. The Guardian should seek direction from the Court when it is not clear whether the Protected Person understood the document.

The Guardian should make sure that the Protected Person has appropriate health insurance. This may include Medicare, a health maintenance organization ("HMO"), Medicare supplemental health insurance, long term care insurance, or Medicaid.

RECREATION

A Protected Person's disabilities may make it difficult to continue many activities that have been sources of happiness over the years. Lack of outside stimuli often results in accelerating the Protected Person's physical and mental decline.

The Guardian has a duty to ensure that the Protected Person has appropriate social and intellectual stimulation and the physical means of

enjoying it. Talk to the Protected Person about what he or she would like to do. If the Protected Person likes to read, make sure that reading material is available and that the Protected Person has properly fitted glasses and a reading light. Large print books and books on audiotapes are available at most libraries and bookstores.

If the Protected Person shares a room with someone, make sure that he or she has earphones. Other sources of pleasure are favorite foods and drinks, lotions and powders, and, for some, television or music.

Encourage the Protected Person to call and write family and friends. Similarly, encourage them to visit or write back. Encourage family and friends to take the Protected Person on periodic outings. Even extremely impaired people enjoy being taken to restaurants, to the park and out for drives. Some organizations will make daily telephone calls to the Protected Person to check on his/her welfare. Many churches have volunteers who will visit the Protected Person regularly. If it is appropriate, encourage and arrange daily activities for the Protected Person.

Make sure that the Protected Person has photographs and pictures of loved ones, particularly if he or she suffers from dementia. Visual stimuli are important to persons with dementia and sometimes can trigger memories.

MAKE SURE OF NECESSARY SERVICES AND REHABILITATION

A Guardian should investigate and make use of community resources that are available and appropriate for the Protected Person. Explore possible support services that promote independence. The community may have a visiting nurse service; meals-on-wheels; homemaker services; rehabilitation training for those who have lost their sight or suffered a stroke; programs which provide volunteers to do shopping and light maintenance work; or volunteers that read for people who need these services.

If the Protected Person's financial resources are insufficient to meet basic needs, the Guardian should look for ways to obtain needed services at no cost, or to supplement the financial resources. A Guardian is never expected to use their own money to care for the Protected Person, but rather should investigate and utilize community programs that provide the appropriate assistance. This may require working with the Conservator and making an application to the state for benefits or entitlements.

RIGHTS OF THE PROTECTED PERSON

When the Court authorizes a Guardian to make certain decisions for the Protected Person, the Protected Person no longer has the legal right to make those decisions for herself or himself. However, many individuals in need of a Guardian may nonetheless be capable of managing some of their personal or financial affairs. The Protected Person retains all decision-making powers that are not specifically delegated to the Guardian in the order of appointment.

Thus, while it may be a delicate balance or a difficult challenge for the Guardian to maximize the autonomy and liberty of the Protected Person while still being responsible for his or her overall or financial wellbeing, it is important to always try to do so to the extent that is reasonable and safe.

A Guardian may not unnecessarily or unreasonably restrict the Protected Person's social or sex life by, for instance, imposing conditions on movement or access to friends or relatives of the Protected Person, unless abuse or exploitation may be occurring.

DOES A PERSON WITH A GUARDIAN HAVE THE RIGHT TO MAKE A WILL?

No person, including a Guardian may make, revoke or amend the Last Will and Testament of another, but a Guardian may, with Court authority, create trusts on behalf of the Protected Person. If the Protected Person created a valid Will before the appointment of a Guardian, the Will remains valid even after a legal finding of incapacity.

GAINING OR RECOVERY OF CAPACITIES

If the Protected Person gains capacity to adequately manage some or all of his or her personal and/or financial affairs, or has gained capacity sufficient to execute an appropriate less restrictive alternative, the Guardianship should be modified or terminated to maximize the autonomy of the Protected Person or formerly incapacitated person.

Whenever a Guardianship is terminated, the former Guardian must submit a final report and/or accounting to the Court and transfer property and records to the formerly incapacitated person, or his or her estate.

CHANGING OR ENDING YOUR DUTIES AS GUARDIAN

Guardians and Guardianships are subject to the ongoing supervision of the Court in the county in which the Guardianship was created. Although no Guardianship is “permanent” when ordered or intended to remain unchanged indefinitely, Guardianships will continue as long as the Protected Person remains legally incapacitated and the Guardian performs its Court-ordered responsibilities. However, Guardianships frequently may be modified or terminated, based upon the changing needs of the Protected Person or formerly incapacitated person. If the reason for the Guardianship disappears, then the Guardianship should be dismissed.

A Court order is required to modify or terminate a Guardianship. Modifications include replacement of a Guardian. The Court may at any time and for good cause modify or terminate a Guardianship. Any person, including the Protected Person to a Guardianship, may petition the Court to modify or terminate a Guardianship, or to replace a Guardian.

GUARDIANSHIPS MAY BE MODIFIED BECAUSE:

- The Protected Person has gained capacity to adequately manage some or more (but not all) of his or her personal and/or financial affairs;
- The Protected Person has gained capacity sufficient to execute an appropriate less restrictive alternative, but still requires the support and assistance that a Guardian provides;
- Other good cause, as determined by the Court.

MODIFICATIONS TO A GUARDIANSHIP MAY INCLUDE:

- Modification from a full to limited Guardianship;
- Modification from a limited to full Guardianship;
- Modification of a less limited Guardianship to a broader (but not full) Guardianship;
- Modification of a broader Guardianship to a more limited Guardianship;
- Removal of a Guardian and appointment of a successor Guardian;
- Resignation of a Guardian and appointment of a successor Guardian;
- Appointment of a co-Guardian.

REMOVAL OR RESIGNATION OF THE GUARDIAN

Guardians are subject to the ongoing supervision of the Court in the county in which the Guardianship was created. If the Guardian fails to perform his/her Court-ordered responsibilities the Letters of Guardianship may be revoked.

A Guardian may wish to resign even though the Guardianship continues in effect. A Guardian must petition the Court for permission to resign and have a successor Guardian appointed by the Court. A Guardian who receives the Court's permission to resign or who is removed by the Court must provide all records and property of the Guardianship to the Court and / or the successor Guardian. The Guardian must continue on as Guardian until the Court removes said individual and appoints a successor Guardian

CLOSING THE GUARDIANSHIP AND FINAL REPORTS

Within 30 days of the death of the Protected Person, the Guardian must file a Suggestion of Death Motion and Order with the Court so that the case can be closed.

REDUCE THE STRESS OF BEING A GUARDIAN

Agreeing to act as Guardian can cause considerable stress because of the many responsibilities it entails. Traditional family relationships are altered with the onset of disability. Often it is difficult for family and friends of the disabled person to accept the transitions that Guardianship necessitates. For example, an adult child may be in the unaccustomed position of making decisions for a parent when acting as a family member Guardian. This can be awkward for the Protected Person and stressful for the parent, the family member Guardian, and other family members.

A Guardian may become the focal point of whatever dissatisfaction people feel about the Guardianship. The dissatisfaction can come from both the Protected Person and other family members. The Protected Person may direct all of their frustration toward the Guardian because of the perception that the Guardian took their freedom away from them. Other family members may perceive that the Guardian is taking advantage of the Protected Person and is only after their assets.

A Guardian can minimize these difficulties by keeping family members and friends informed of the decisions being made concerning the Protected Person and include them in the decision being made whenever possible. Gradually building a foundation of trust and clear communication will make things easier for the Guardian, the Protected Person and the Protected Person's family and friends.

In addition, Guardians must recognize that the job of caring for an elderly or disabled person, even a close family member, can be extremely demanding. Many Guardians feel overwhelmed at first by the responsibility of providing for the Protected Person's needs and making important decisions. If a Guardian becomes exhausted and overwhelmed, he or she will soon find it difficult to provide the level of care and understanding needed. To avoid exhaustion and emotional distress, a Guardian should explore the available services in the community for caregivers and Guardians. It is okay to take a vacation, however the Guardian must designate someone to be the contact person in case an emergency happens with the Protected Person.