

Navigating Guardianships Part Three: Duties Of A Guardian

By Elizabeth Glines

Before Appointment

Before being appointed, prospective guardians in Maryland must watch an orientation video and complete a training program. There are different programs for guardians of minors versus guardians for disabled adults. Once the training is complete, the prospective guardian must sign the "Completion of Guardianship Orientation and Training" form, which will then be filed. Public guardians appointed by the Court, such as government agencies, need not complete this training.

Guardianship generally begins on the date the Order appointing the guardian is signed.

Rights and Responsibilities

In a previous installment of this series, we mentioned that a guardian can have responsibility for the ward's person, property, or both. Legally, guardians are considered fiduciaries and may exercise the powers of a fiduciary as outlined in Maryland Estates & Trusts code 15-102.

The guardian must adhere to the role designated to them in the original petition and the Court order. Altman & Associates recently filed a petition for a mentally ill senior citizen's guardianship of both person and property; however, different agencies were appointed for person and property. If the guardianship is approved, the agency in charge of the person would not have access to the alleged disabled person's bank account, which constitutes property.

A person's guardian is charged with providing healthcare and providing for daily needs such as food, clothing, and safe housing. The guardian can also medically decide for the disabled person, including end-of-life decisions. The responsibilities are broad and dependent on the individual needs of the ward.

A guardian of the property may, without Court authorization, access the disabled person's financial resources to pay for necessities such as

food and clothing, health care, and bills for maintenance of assets. Considering the implications of giving another party access to individual bank accounts and property records (which often include sensitive information like Social Security numbers), guardians of the property must adhere to specific strict guidelines.

Reporting Requirements and Oversight

Guardians, as legally appointed personnel, must file annual reports. A guardian of the person must file a report with the Trust Office once a year, within 60 days of the end of the guardianship year. If the guardian was appointed on March 1, the first report must be filed by the end of May the following year. This report details the ward's status, the guardian's care plan, and whether any changes to the guardianship are required.

In addition to an annual fiduciary report, a property guardian must file an annual accounting report within 60 days of appointment. The accounting report provides a record of the financial transactions on behalf of the ward for the previous year and is reviewed by a trust clerk. If requested, copies of these reports must be sent to interested parties named on the original petition.

Adult public guardianships are reviewed by an Adult Public Guardianship Review Board every six months to recommend to the Court whether to continue, modify or terminate the guardianship. The Board consists of medical professionals, representatives of local social services and elder services departments, an attorney, two citizen representatives, a disability professional, and a person with a physical disability. The Board does not review private guardianship.

If the reports are approved, the Court orders to continue the guardianship for another year. If the report is not approved, the Court will take the required action, including terminating the guardianship and appointing a replacement if necessary.

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Ending a Guardianship

Any interested person can request termination of the guardianship at any time, including the disabled person and the guardian. This would begin a process like the original petition, with different procedures behind the requested termination. There are several reasons a party would want to end a guardianship:

- 1) The disability necessitating the need for a guardian is no longer present. Here, the guardian must ask the Court to terminate the guardianship. Since most disabilities that require a guardian are ongoing, this is relatively rare.
- 2) The guardian asks to be removed. They can either name a successor guardian (who will then have to file a new petition), or the Court can appoint a replacement.
- 3) The disabled person feels they do not need a guardian. They can petition the court to end the guardianship through their legal counsel.
- 4) The disabled person has passed away. The guardian must notify the Trust Office of the death immediately and file the required paperwork with a copy of the disabled person's death certificate.
- 5) The guardian fails to perform their duties properly, misbehaves, or abuses their power. Controversies and other issues related to guardianship will be discussed in Part Four.

If you are a guardian or have been recently appointed and have questions, please call the estate attorneys at Altman & Associates at 301-468-3220 for a consultation.

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