



# Guardianship 101



## What is Guardianship?

In North Carolina, Guardianship arises from a court proceeding where a judicial official finds that an individual lacks sufficient capacity to manage his own affairs and is unable to make and communicate important decisions (the Ward). After making the determination that the individual lacks competency, the judicial official then appoints a Guardian, who is authorized to make decisions on behalf of the Ward.

## Why Choose Guardianship?

Guardianship is often pursued in situations where an individual is no longer able to handle his finances, is confused easily or forgetful, has a diagnosis that causes a cognitive impairment, is unable to make informed decisions, or has lost the ability to function independently. Guardianship does affect a person's rights and privileges, therefore, one should consider whether there are alternatives to guardianship. For instance, if an individual has a durable power of attorney and appointed health care agent, guardianship may not be needed.

## How to Proceed with Guardianship

The Guardianship proceeding begins by filing the Petition for Adjudication of Incompetence and Application for Appointment of Guardian (AOC-SP-200) at the Clerk's Office in the County where the individual (the Respondent) resides or is currently inpatient at a facility. The Clerk will schedule a hearing and appoint an Attorney (Guardian Ad Litem) to represent the best interest of the Respondent. The Respondent will be served with the Petition personally by the Sheriff.

## What to Expect . . .

The Guardianship proceeding is a formal court hearing. You, as the Petitioner, will be required to produce evidence to support your claim that the Respondent lacks competency. The Petitioner, Respondent and the Guardian Ad Litem will be allowed to ask questions and offer testimony. The hearing is two parts. The first portion is the determination of whether the Respondent is incompetent and if so, can the guardianship be limited. The second portion is the appointment of the guardian and the determination of the type of guardian.

## Types of Guardians

**Guardian of Person:** Responsible for the care, comfort, and maintenance of the Ward. Arranges for vocational training, education, and habilitation of the Ward. Decides where the Ward will live. Consents to medical and psychological treatment. Takes reasonable care of the Ward's personal effects.

**Guardian of Estate:** Appointed for the purpose of managing the Ward's finances, real and personal property, and other business affairs. Must post an insurance bond annually. Accounts to the Court for expenditures made on behalf of the Ward from the Ward's Assets.

**Limited Guardianship:** Certain rights and privileges reserved to the Ward that the Clerk has determined that the Ward has capacity to perform. Example: The ability to make decisions regarding employment.

*Guardians are encouraged to support the Ward's right to participate in decisions affecting him, to petition for restoration of competency if it becomes a viable option, allow the Ward the same degree of error as a competent person.*

## What Rights/Privileges are Affected?

- The Ward's driving privileges will most likely be revoked by the N.C. Division of Motor Vehicles.
- The Ward will not be able to initiate a civil action for divorce.
- The Ward cannot execute a Power of Attorney or Healthcare Directive.
- The Ward's ability to execute a Last Will and Testament will likely be scrutinized.
- The Ward will no longer be able to own or possess a firearm or ammunition and will be added to the National Instant Criminal Background Check System, which is maintained by the FBI.

## When does the Guardianship End?

The Guardianship terminates when the Ward dies or when the Ward is fully restored to competency.