



Florida Guardianship  
Guidebook | First Edition

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Homer L. Hartage

# Family & Professional Guardianship

A complete planning guidebook for guardianship  
of adults and children with Dementia, Alzheimer's  
& Developmental Disabilities.



# Family and Professional Guardianship

A COMPLETE PLANNING  
GUIDE

Guardianship of Adults  
and Children

with Dementia, Alzheimer's, and  
Developmental Disabilities

Homer L. Hartage

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Written by Homer L. Hartage

Published by The Hartage Foundation Inc.

PO Box 560245

Orlando, Florida 32856

[homer.hartage@agedcareguardian.com](mailto:homer.hartage@agedcareguardian.com)

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# Dedication

This book is dedicated to all the past and present clients of AgedCare, who inspire me daily, and to my late mother, Leverna, who instilled in me a spirit of caring for others and a passion for life-long learning. Mama, it worked.

# Epigraph

*We never know how good we are until we are called to rise.*

— Emily Dickinson

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# 1. Introduction

## **Why Do We Need a Book on Guardianship in Florida**

Let's face it. In addition to the emotional turmoil that goes along with seeking and obtaining guardianship, families are often confused and overwhelmed by the legal process. I have known for some time that there was a need for a more definitive book on this process in Florida, a book that would help explain in more simple terms how it all works, what options are available, what to do, and what to expect.

There are an increasing number of elderly and otherwise incapacitated individuals who feel alone, overwhelmed. Where can they turn for help? Millions have the same concerns.

One guardianship case drove this point home for me more than any other. It made me keenly aware



of the meaningful benefits of closely listening to clients under guardianship, even when diagnosed with dementia or other disabilities.

The story starts in September 2022, when I met a female *ward*, as they are called in Florida. I'll call her Lynn.

I was assigned as Lynn's guardian in July of 2022 and was the successor of two previous guardians. Lynn's case was thought by the courts and by me (initially) to be an indigent guardianship case. This assumption is what brought us together, as my office would regularly take pro bono cases. It turned out that Lynn wasn't indigent at all. There was no financial reason for her to live in the conditions I found her - poor, alone, with limited access to the comforts of the life she had been accustomed to. Lynn's net worth was nearly four hundred thousand dollars (more on this later).

Is Lynn's case unique, or does it reflect the presence of barriers to quality service provided to incapacitated persons in Florida? Lynn's case is not unique. There are barriers, and this is something we'll explore in this book. A search of Google and Amazon will leave you wondering why more has not been done to provide families and care professionals with at least some basic information on guardianship.

There are, however, a few books on the subject. One such book is *The Fundamentals of Guardianship*, published by the National Guardianship Association. This book contains a lot of helpful information on guardianship, but it is mainly directed at guardianship professionals. Its subtitle *What Every Guardian Should Know* says it all. Furthermore, it is a general textbook and does not address the unique needs of Florida guardianships.

There are several books that do address the Florida guardianship program. While these works advance our understanding of guardianship, most of them are outdated. There is one book, however, *Florida Guardianship: Who Shall Live and Who Should Die*, by Beverly Rochelle Newman that does address what families need to make clear decisions on selecting a guardian.

To fill this gap, I will address this topic in simple but informative ways. Throughout the book, readers will learn how Florida guardianship works. I will begin by explaining what guardianship is and its specific application in Florida, as well as introducing AgedCare, a resource of The Hartage Foundation Inc., a nonprofit organization that supports professional guardianship and scholarship.

Next, I will explain the different types of guardianship, including person, property, limited, voluntary, guardian advocate, veteran, plenary, family, and professional guardianship. We will then delve into the appointment process for becoming a guardian, including who can become a guardian, the steps and requirements for obtaining guardianship, and the role of the examining committee.

One chapter will be dedicated to discussing the topic of guardian compensation in Florida, including the differences between professional and family guardians. In addition, I will examine the governing body and guardianship reporting requirements in Florida, including the Department of Elder Affairs, Clerk of Court, the Probate Circuit Court, and the various reporting periods and documents required.

I will also provide an evidence-based perspective on when guardianship is needed, including for persons with substance abuse and other mental disorders, as well as alternatives to guardianship such as durable power of attorney and health care surrogate designation. The placement options for incapacitated persons and the associated costs will also be addressed, as will the funding options for care and placement, such as retirement benefits, Medicaid, Medicare, and veterans' benefits.

You will also learn about the management of guardianship, including getting, resigning, and removing a guardian, as well as discharging a guardian and filing a complaint in Florida.

I will share case studies and actual field examples to help readers gain helpful insight that will address your needs for a guardian for your loved one. You will read about success stories, difficult cases, problems and occasional errors made, and how I was able to address them.

The ultimate goal of this book is to serve as a guide that will make nearly any guardian case succeed.

## **1.1. What is Guardianship**

Guardianship is a legal process in which a court appoints an individual or entity to make decisions on behalf of another person who is deemed incapacitated and unable to make decisions for themselves. The purpose of guardianship is to protect the well-being and interests of the incapacitated person, also known as the *ward*, by ensuring that they receive proper care and protection.

The legal definition of guardianship can vary by jurisdiction, but it generally refers to the authority

and responsibility of a guardian to make decisions and act on behalf of a ward in accordance with the law. Guardianship can be granted over an individual's person, property, or both. It can be used to make decisions related to the ward's personal care, safety and well-being, medical treatment, residence and living arrangements, education, and financial management.

As a general rule, guardianship is a measure of last resort and is typically used when other less restrictive alternatives, such as the power of attorney or a healthcare surrogate, are not appropriate or available.

But guardians are also responsible for protecting their ward's assets and property and must keep accurate records of the ward's financial and personal information. They must report to the court on a regular basis about the ward's condition and the actions taken on their behalf.

## **1.2 Types of Guardianship**

There are several types of guardianship.

1. *Person guardianship* is used to make decisions about the ward's personal care and well-being. This includes decisions about medical treatment, living arrangements, and personal relationships.

2. *Property guardianship* is used to manage the ward's financial and property affairs. This includes decisions about the ward's assets, income, and expenses.
3. *Limited guardianship* is a type of guardianship that is used when the ward only needs assistance in specific areas of their life, such as managing their finances or making decisions about their medical care.
4. *Voluntary guardianship* is when a person voluntarily gives up the power to make decisions about their own personal care and well-being and gives it to another person.
5. *Guardian advocate* is a type of guardianship that is used for individuals with developmental disabilities. This type of guardianship allows the guardian to make decisions about the ward's personal care and well-being, as well as decisions about their education and training.
6. *Veteran guardianship* is applied to veterans who are unable to make decisions about their own personal care and well-being due to a disability related to their military service.
7. *Plenary guardianship* is a type of guardianship that gives the guardian complete control over the ward's personal care and well-being, as well as their financial and property affairs.

8. *Family guardianship* is appointed to a family member of the ward
9. *Professional guardianship* is a type of guardianship that is appointed to a professional guardian who is responsible for the ward's personal care and well-being, as well as their financial and property affairs.

Each type of guardianship has its own unique purpose and responsibilities, and it is important to understand the differences between them in order to make informed decisions about the care and well-being of the ward.

The process of determining incapacity is often initiated by a family member, friend, or health-care professional who has concerns about the individual's ability to make decisions. This is where many families and loved ones find the process distasteful. Guilt and shame may cloud their decision, but this must be thought through logically and with as little emotion as possible to determine what is in the best interest of the ward.

Once the petition for guardianship is filed, the court will appoint a neutral third party, such as a physician, to evaluate the individual and determine if they meet the legal criteria for

incapacity. The criteria for incapacity vary by state but generally include the inability to understand the nature and consequences of decisions, the inability to communicate decisions, and or the inability to meet basic needs.

Once the court determines that the individual is incapacitated, they will appoint a guardian to make decisions on their behalf. The legal criteria for appointing a guardian include the ward's preference, the suitability of the proposed guardian, and the least restrictive option for the ward. The relationship between guardianship and incapacity is rooted in the principle of protecting the ward's best interests, while also ensuring their autonomy and rights are respected to the greatest extent possible.

## **1.3. Guardianship in Florida**

### **1.3.1. Overview**

In the state of Florida, guardianship is a legal process in which a court appoints an individual or entity to make decisions on behalf of another person who is deemed incapacitated. Guardianship in Florida can be divided into two types: *guardianship of the person*, which deals with the ward's personal needs, and *guardianship of the*



*property*, which deals with the ward's financial and property matters.

The Florida guardianship process begins with a petition for guardianship filed by an interested party, such as a family member or friend, in the circuit court of the county where the ward resides. The court will then hold a hearing to determine the ward's incapacity and whether the appointment of a guardian is necessary. If the court finds that the ward is incapacitated, it will appoint a guardian and set out the scope of the guardian's powers and responsibilities.

In Florida, guardianship is overseen by the Office of Public and Professional Guardians, which is responsible for ensuring that guardians are qualified, trained, and fulfilling their responsibilities in accordance with the law. The office also investigates complaints against guardians and can take action to remove a guardian if necessary.

As in other states, problems with public guardianship range from the quantity and quality of unfulfilled demand for services to negative outcomes for guardianship and other protective services. The absence of decision-making capacity and a legal guardian result in extended hospital stays for critically ill patients in ICU, with a

median length twice as long compared to other ICU patients.

The first national study on public guardianship evaluated how it affects the ability of individuals with legal incapacity to access their rights, benefits, and entitlements. The study revealed a requirement for public guardianship and some cases of effective advocacy, but also uncovered issues such as understaffing, underfunding, and overburdening of public guardian offices, neglect of many individuals under public guardianship, and instances of abuse.

A more recent national study showed that nearly all public guardianship programs suffer from insufficient staffing and funding, undertrained and underpaid staff, limited and poorly managed data systems, and a lack of protections against improper coercion in due process.

### **1.3.2. Legal Criteria for Appointing a Guardian in Florida**

In the state of Florida, a guardian can be appointed by the court for a person who has been determined to be incapacitated. Incapacity is defined as a condition in which a person is unable to manage their property or make decisions about their own welfare due to a physical or

mental impairment. The legal criteria for appointing a guardian in Florida are outlined in the Florida Statutes, Section 744.

According to the statute, a person can be found incapacitated if they are unable to perform at least one of the following tasks without assistance:

- Provide their own food, clothing, or shelter
- Attend to their own physical health
- Manage their own financial affairs
- Understand the nature and consequences of their decisions

Additionally, the statute states that in order for a guardian to be appointed, there must be clear and convincing evidence that the person is incapacitated. This evidence can come from a medical examination, psychiatric evaluation, or other relevant information. The court will also consider any alternatives to guardianship, such as a power of attorney or a trust, before appointing a guardian.

### **1.3.3. The Guardianship Process in Florida**

The guardianship process in Florida is established by state law and is governed by the Florida

Probate Code. The process begins with the filing of a petition for guardianship in the appropriate circuit court. The petition must include specific information about the proposed ward, including their current living situation and medical condition.

Once the petition is filed, the court will appoint *guardian ad litem* (GAL) to investigate and report to the court on the proposed ward's needs and whether guardianship is necessary. The GAL will also investigate any potential conflicts of interest between the proposed ward and the proposed guardian.

The court will also set a hearing date for the petition, and notice of the hearing must be provided to the proposed ward, their relatives, and any interested parties. The ward has the right to be represented by an attorney at the hearing.

After the hearing, the court will make a determination on whether to appoint a guardian. If the court finds that a guardian is necessary, it will also determine the type of guardianship that is appropriate, such as a guardianship of the person, the property, or both.

Once a guardian is appointed, they are required to file regular reports with the court and must

follow all court-ordered conditions of the guardianship. The ward also has the right to request a review of the guardianship at any time, and the court can also initiate a review on its own motion.

In Florida, the Uniform Guardianship and Protective Proceedings Act (UGPPA) outlines the rights and procedures for adults who are unable to make decisions regarding their person or property and need a guardian to assist them. The UGPPA provides a framework for the court to follow when determining whether guardianship is necessary and what type of guardianship is appropriate.

## **1.4. The Hartage Foundation Inc. dba AgedCare**

### **1.4.1. History of AgedCare**

Inspired by a visit to The Florida Frist Firm, a group of medical and elder law attorneys, I envisioned a similar agency model for my guardianship business. This office, with its team of attorneys and 12 or so employees, was successfully fulfilling its social service mission. I realized that this approach could work for a guardianship office, as currently nearly all guardianship offices in Florida are solo practices, with only one or two staff members.

To bring this vision to life, I used an established Foundation, the Hartage Foundation Inc. which was founded in 2007 as a non-profit 501(c)3 organization. Under the foundation, I launched AgedCare in 2017 as a Professional Guardianship Company. This company has a fully staffed office, including a case manager, property and asset manager, an office marketing manager, and a guardian.

### **1.4.2. Mission Statement**

The mission of the Hartage Foundation Inc., d/b/a AgedCare, is to care and to serve, to be an industry leading guardianship company that provides advocacy and support to persons in need who, due to incapacity, lack the ability to manage their affairs.

We believe that this mission statement is important because it guides our actions and decisions, and helps us stay focused on our ultimate goal of providing the highest level of care and service to our clients.

### **1.4.3. Company Summary**

The Nonprofit Corporate Guardianship model, as it is called in Florida, offers long-term stability for the wards, the guardian, and any potential

successor guardian. With this model, the guardianship business can be transferred as a whole, rather than in parts, as is currently done when a guardian is removed, resigns, or retires. The Hartage Foundation, Inc. acts as the guardian, which is a significant distinction in the guardianship process.

This stability and continuity can be achieved through the use of automation and a dedicated staff. AgedCare, the professional guardianship company established by the Hartage Foundation, currently employs six full-time staff members, including an office manager, a property and asset manager, two guardians, two case managers, and a companion care staff member. These employees allow the office to expand services to clients, delegate responsibilities, improve oversight, maintain timely reporting, and consolidate client file documents. All of these elements are crucial for a well-designed transition plan in the event of the death, disability, or retirement of the guardian.

Furthermore, state regulations require all employees to be approved by the Department of Elder Affairs, which includes a Level 2 background check and a credit check. Automation also plays a vital role in the process by allowing for the centralization of client information and creating a transparent operation.

The Hartage Foundation provides professional guardianship services throughout the state of Florida, with initial operations in Orange, Lake, Seminole, Volusia, and Osceola Counties.

#### **1.4.4. Why Guardians Need an Exit Plan**

The corporate guardianship model, also known as the nonprofit model, offers a solution to the issue of guardianship succession. It is important for a business plan to include an orderly process for the guardian to retire while ensuring consistent care for the wards under their supervision.

This is not only fair to the clients, but it also eliminates the uncertainty and chaos currently present in the system. It is not just to leave the fate of the wards solely in the hands of the courts without a comprehensive file and client history for a successor guardian to reference. A properly designed and executed transition plan, with the help of automation and staff, can provide a smooth transition for both the ward and the successor guardian.

At The National Guardianship Association Conference a few years ago, I spoke with a fellow guardian about operating a business in this field. She looked at me with disapproval and



said, “You’re just in it for the money.” As a new guardian, this comment was hurtful. Like so many, I entered this profession to serve and support others. This is paramount and the foundation of guardianship.

But as I thought more on her comment, things became clearer. If you are in this business solely for the money, then this is the wrong field for you. On the other hand, being a good businessperson is equally important to ensure the success and well-being of our wards.

With the advent of the COVID-19 pandemic and the realization of how quickly things can change, it has become imperative for guardians to have a plan in place for transitioning their business. Ignoring this issue is no longer an option.

There are various models for guardianship business operations across the country and they operate under different names; for example, they are called guardians in Florida and conservators in Connecticut.