



## What is a Guardian?

A Guardian is one or more persons or entities appointed by a court of law to manage the personal and/or financial affairs of a person (the Protected Person) who is no longer able to manage his/her own affairs due to a medical/mental/physical disability, within the guardianship laws of the state.

## What does a Guardian do?

A Guardian makes sure that the person under a guardianship (Protected Person) is safe, his/her assets are safe and that the decisions made are in the Protected Person's best personal and financial interest.

## Is the Guardian responsible for the Protected Person's bills?

The Guardian is not personally responsible for the Protected Person's bills. The Protected Person's finances are to pay for the care and needs of the ward. The Guardian is responsible for making sure that creditors are aware of the financial limits for payment of any bills that occurred before the guardianship, and to make decisions for the care of the Protected Person within the parameters of the Protected Person's finances. The Guardian is also responsible to apply for any entitlements that would assist the Protected Person's estate to help maintain the Protected Person such as SSA, SSI, Medicare, and Medicaid.

## I live out of state. Can I become a Guardian?

A person out of state can petition to be the guardian of a Nevada resident. One of the requirements, however, is that the proposed guardian must obtain a resident agent in Nevada to comply with the notice requirements.

## If I do not want to be the Guardian, what are my options?

The options are to: have another family member or friend become the guardian, apply to the Public Guardian in the county where your loved one resides, or if the proposed Protected Person has sufficient finances, you can contact a private professional guardian in the Protected Person's area.

## How much are legal fees for a guardianship?

The cost of a guardianship can vary. We always recommend a person consult with an attorney who works in family, estate, or elder law. If an attorney is retained, it then depends on whether or not the guardianship is an emergency (temporary guardianship), which then becomes a general or permanent guardianship, or whether a general guardianship is sought. Attorney fees can be costly and should be discussed with the attorney directly. All attorney fees can be paid from the assets of the Protected Person, and if that is the case, they are to be court-approved before they are paid to the attorney.

If the person who wants to be the Guardian cannot afford an attorney in Washoe County, there is a packet at the Self-Help desk at the courthouse on Sierra Street or the file clerk's office at the courthouse on Court St. in Reno. An attorney is not required, and a person can complete the packet, follow the instructions, go to court, and ask the judge to become a Guardian.

## How much do professional Guardians charge?

Professional Guardians include Public Guardians and Private Professional Guardians. Public Guardians are directed by their county commissioners as to what they can charge. Most, if not all, Public Guardians in Nevada can and do charge fees if the Protected Person has assets to pay for fees. If the Protected Person is indigent, fees are usually not charged. For information on what fees are charged by the Public Guardian in the county in which the guardianship will be petitioned in, please contact that Public Guardian's office.

Private Professional Guardians (PPGs) do charge fees, so the Protected Person must have assets that can pay for those fees or be converted into funds that will eventually pay for fees. For the most part, when a Protected Person's funds are spent to the point where there are not funds to pay the PPG, most PPG's keep the case and work it without further compensation if no other funds are found. Fees can differ per PPG or PPG company. It is important to understand that a Guardian's fees are usually more expensive at the beginning of a guardianship due to complicated issues that may take time to resolve. As a guardianship continues, most issues become resolved and the Guardian's fees are mostly comprised of the maintenance of everyday issues that occur.

## What is the difference between a guardian and a power-of-attorney (POA)?

A POA is a contract between two people, the grantor and the agent-in-fact. The courts are not involved, although an attorney can be involved in developing the POA. The agent-in-fact is the person nominated within the POA to act according to the POA's instructions to manage the affairs of the grantor. A Durable POA (DPOA) remains effective after the grantor is no longer able to manage his own affairs due to illness, lack of capacity, or any other reason stated in the POA. At the time this happens, one or more physicians' reports are usually needed to verify the condition. The agent-in-fact, if willing, then takes over the affairs according to the POA's directives. It is important to understand that a grantor must be competent to sign any type of POA. A grantor should be able to understand the terms of the contract and the ramifications of such a contract. The POA can be rescinded by the grantor. The DPOA can also be rescinded by the grantor before he/she becomes incapacitated.

A Guardianship is based upon evidence provided to a judge (in Nevada, it is a judge in the District Court) in the form of a petition. The judge reviews the evidence and decides whether the guardianship is necessary within the parameters of the guardianship laws. If the guardianship is granted, the court maintains jurisdiction over the guardianship and requires accounting of both the person and the estate, depending on what type of guardianship is granted. The guardian must conform to the guardianship laws. If a person does not have the capacity to sign a POA, a guardianship is usually the only vehicle available to assist this person.

## Which is better, a DPOA or a guardianship?

The DPOA's are good estate planning documents and can prevent a guardianship in some cases. The DPOA's can also be a vehicle that a person uses to nominate a guardian if needed in the future as the law gives priority to someone nominated by the proposed ward in writing. DPOA's have little to no oversight of the agent-in-fact, which can lead to exploitation and abuse of the grantor's person and estate. But if the



agent-in-fact is trustworthy, a DPOA can be quite effective. Another area of concern is that some financial institutions do not recognize a DPOA unless the DPOA document is one of their own documents. In the state of Nevada, a DPOA cannot be used to voluntarily admit a person into a psychiatric unit. But once a physician has stated that his patient has lost capacity, or there have been obvious signs of dementia or other issues affecting the mental state of a person, a DPOA may not be legally appropriate to execute.

A guardianship carries more weight than a DPOA due to the fact that it is a court order. But a guardianship is usually seen as the last resort in assisting a person because it takes away most of that individual's civil rights. It is more expensive due to the court costs and possible fees of an attorney or private professional guardian. But due to the presence of the court, there are oversight and defined laws that make guardianships more accountable and potentially less abusive and/or exploitive. Sometimes a guardianship (with a court order) is the only vehicle available to do what needs to be done to assist an individual.

## **Is there any way my loved one can stay in her house?**

If a person has the finances to pay for the care needed in order to keep him/her in the home, then the guardian needs to decide whether or not living in the home is in the person's best interest. Unfortunately, most decisions are based upon the financial feasibility of the outcome. But if the Protected Person can afford to stay in and does better by living in the home, then the guardian should do whatever can be done to maintain the Protected Person in that home. It is good to understand, however, that staying in the home is not always the best situation due to various reasons. It is always helpful to get outside evaluations to help you determine whether or not the home is the best living arrangement for your loved ones.

## **What happens if the proposed protected person does not want a guardianship?**

Most people who need a guardianship have lost the ability to understand that they have a problem and need help, so it is not surprising that a person would not understand the need for a guardianship and want to fight it. Sometimes family or whoever is petitioning for the guardianship, can negotiate with the proposed Protected Person. So even though the proposed Protected Person may not be pleased about it, he or she is able to work through any displeasure and the guardianship may be granted. But if that does not happen, the proposed Protected Person does have the right to contest the guardianship and have an attorney. In that case, the judge will put the guardianship hearing on the contested calendar. The contested calendar is where extra time is given to the hearing, which is an actual trial without a jury. This time is set-aside in order for the proposed Protected Person to prove why a guardian is not needed and where the petitioner, usually the proposed guardian, is to prove why the proposed Protected Person needs a guardian. Contested cases can be extremely expensive, so it is best if the parties can come to some type of settlement before the trial. But sometimes that is not possible and the contested hearing takes place.