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Uniform Guardianship Would Strengthen Adult Protection in Florida

By Heather Kirson, Howard Krooks, and Melissa Williams

Opinion

Elder law attorneys Howard Krooks and Heather Kirson highlight the benefits of Florida's less restrictive adult guardianship laws, and areas where more efficiencies can be added through adoption of the Uniform Guardianship Act.

Florida has enacted some of the most protective, comprehensive, and cutting-edge laws to safeguard adults under guardianship, making it one of the leading states in this area.

At the same time, there is always room for improvement through legislation. And more efficiencies can be drawn from the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

With the nation's highest percentage of seniors, the Sunshine State has a unique obligation to those facing the prospects of guardianship—and has done a tremendous amount to meet the challenge.

Florida's legislature has made clear that less restrictive alternatives must always be pursued and considered before a guardianship is established. Courts have a duty to remove only the rights that place the ward at risk. Guardianship in Florida is a last resort to protect the state's most vulnerable residents.

Protective Process

In Florida, courts are required to consider the ward's expressed wishes regarding who should be appointed as their guardian, as well as the care they receive. The court must review any conflicts of interest that may exist with a proposed guardian, such as whether that person provides substantial services to the individual in a professional or business capacity.

The court appoints an attorney for each alleged incapacitated person to ensure due process rights and present the individual's position and wishes to the court. But the potential ward is allowed to substitute their own counsel for the one appointed by the court, allowing autonomy in this important legal matter.

Another way Florida law protects a prospective ward is by ensuring that any existing advance directives, such as a durable power of attorney or designation of health-care surrogate, are honored to the extent possible. In initial guardianship pleadings, the petitioner is required to advise the court of any such directives.

Until the court rules on the questions of incapacity and guardianship, these documents remain in place if a family member is named as agent under a durable power of attorney.

Often, these documents are the less restrictive alternatives that the court recognizes. The court has a duty to take away only the rights that place the person at risk, often resulting in a limited guardianship that allows them to keep as many rights as possible.

Guardian Standards

Florida law also sets certain standards for the individuals who would serve as guardians. The state Office of Public & Professional Guardians registers public and professional guardians, while monitoring them throughout the year in the event any required reports are late.

All public and professional guardians in Florida are subject to rule regarding their interaction with a ward and can be disciplined for violating them. In addition, all guardians must be represented by an attorney and pass a criminal and financial background check.

Family guardians are required to complete an 8-hour course on guardianship, while professionals complete a 40-hour course, pass an exam, and take additional continuing education courses.

All guardians are expected to submit initial and annual reports to the court regarding medical care, treatment, and finances, and outlining any activities that enhance the capacity of the person they are helping.

Room for More Progress

There is always more to be done to protect some of Florida's most vulnerable residents. In response to an incident when a professional guardian allegedly failed to honor an individual's end-of-life wishes, Florida's legislature passed a bill requiring guardians to secure a prior court order before removing any life-sustaining treatment.

Confidentiality is also key. In Florida, many aspects of guardianship cases are confidential to protect the adult's privacy, dignity, and finances.

As attorneys who are often appointed to represent the alleged incapacitated person in such cases, we recognize that the right to privacy is integral to protecting the individual, while seeking a proper balance between the public's access to information and an individual's right to privacy.

Florida elder law attorneys are working with many clerks' offices to allow for a better reporting system, so that all Florida judicial circuits will be able to determine how many cases each professional guardian is currently managing.

In this way, we hope to prevent abuse of the system while ensuring that professional guardians are able to properly protect those under their care.

We continue to call on lawmakers to adopt legislation satisfying the protections offered by the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which makes the guardianship process more efficient and less confusing for those involved.

Florida can make the system even more protective and effective by joining the 46 states that have adopted Uniform Guardianship. We set the standard on so many other fronts, and in this we cannot allow our state to lag behind.

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