

April 2010
FREE LEGAL SEMINAR

ON

**Guardianship Law in
Nevada**

A Washoe County Law Library Community Service Program

Speaker: Ryan J. Earl, Esq.

Date: Thurs., April 29, 2010

**Location: Washoe County Law Library
75 Court St., Old Courthouse**

Time: 5:00 – 7:00 PM

*Due to limited space please sign up ahead of time by
contacting the Washoe County Law Library at*

328-3250

GUARDIANSHIP LAW IN NEVADA

WELCOME

- Special Thanks
- Housekeeping
- Introductions

What Laws Governs Guardians?

- Nevada Revised Statutes, Chapter 159
Guardianships
- <http://www.leg.state.nv.us/NRS/NRS-159.html>
- Guardians must familiarize themselves with the law, as it governs their duties
- Experience matters; seek legal and other assistance.
- Resources are available (Self Help Center; Guardianship Training Classes by Washoe County Public Guardian's Office)

GUARDIANSHIP

A Guardian is a person or entity who is appointed by a Court and given authority to protect the property and/or person of one who is incapable of, or needs assistance in, protecting his or her own interests.

WARD

A Ward is a person for whom a guardian has been appointed.

GENERAL CONSIDERATIONS

- Guardianship v. Alternatives
- Guardianship of Person v. Estate
- Adult v. Minor Guardianships
- Special v. General Guardianships
- Permanent v. Emergency Guardianships

GUARDIANSHIP v. ALTERNATIVE STRATEGIES

Usually guardianship proceedings should be considered only after considering authority set forth in Durable Powers of Attorneys, Trust Agreements, and similar written directives.

- Written Desire of Proposed Ward
- Nature of Incapacity
- Potential for Abuse/Neglect
- Clarity of Authority
- Family Dynamics

AGENCY AUTHORITY

A Power of Attorney (POA) is a written instrument executed by an adult with capacity, authorizing another person to act as his or her agent.

Advanced Directive is a document executed by an adult with capacity, stating wishes about end of life decisions (i.e., artificial nutrition or hydration, resuscitation)

GUARDIANSHIP AUTHORITY

The institution of a guardianship is a serious matter, as the Ward's Constitutional Rights are being impacted. The Guardian has the highest of duties towards the Ward and the Court, and is obligated to know and follow guardianship law (which includes filing reports, inventories and accountings and seeking Court permission prior to taking certain actions). The responsibility of making decisions for another individual requires the utmost care and diligence, always with the idea of maximizing the rights, autonomy and independence of the Ward.

INTERACTIONS

The Guardian must be well informed about the Ward and able to effectively communicate with:

- doctors/medical professionals
- social service personnel
- residential service providers
- financial professionals
- social workers
- attorneys

The Guardian needs to be an active and engaged advocate for the Ward.



What other parties may be involved in my loved one's guardianship?



- **Attorney for the ward**-attorney appointed to represent the ward's attorney; may be private attorney or Washoe County Senior Law Project
- **SAFE Volunteer**-Special Advocate for Elders, volunteer who is appointed by the court to act as an advocate for the ward's wishes and as the "eyes and the ears" of the court

The guardian is required to work cooperatively with an agency or program assigned to the case by the court.

GUARDIAN OF PERSON V. ESTATE

A Guardian of the Person is generally responsible for managing the everyday and long term personal needs of the ward, including:

- Safe and Affordable Living Arrangements
- End Neglect
- Medical Decisions and Consents
- Personal Care Arrangements
- Meeting all Basic Needs to Ensure the Highest Quality of Life within the Limitations of the Available Services and Resources

GUARDIAN OF ESTATE

A Guardian of the Estate is responsible for managing the ward's personal finances and assets.

- Personal property
- Real property/real estate
- Bank and brokerage accounts
- Bill paying

COMMON MISCONCEPTIONS

A Guardian is NOT responsible
to...

- Pay debts of another with the Guardian's personal funds. (A guardian is only responsible to pay the ward's debts with the ward's funds.)
- Have the ward live in the Guardian's home. (A guardian is not required to have the ward live in their home with them.)

Adult v. Minor Guardianships

- **Minor defined**: Person less than 18 years of age. (NRS 159.023; but see NRS 159.191). A minor is ineligible to be a guardian (NRS 159.059)
- **Temporary Guardianship**: Minor is unable to respond to substantial and immediate risk of physical harm or financial loss (see NRS 159.052 and .0525). Standards similar to adult guardianships.
- **Right to an Attorney**: Minor is entitled to an attorney (NRS 159.0483).
- **Parents of Minor are Preferred**: If qualified and suitable (see NRS 159.061), the parent(s) are preferred over all others. Guardianship must not conflict with valid custody order.
- **Request of Minor 14 Years or Older**: Court is to consider who is most suitable as guardian, among other factors, any request of a minor 14 years or older. (NRS 159.061).
- **Parental Appointment of Guardian**: Parent can appoint guardian for minor child for up to 6 months without Court authority (NRS 159.205). Member of Armed Services may appoint guardian over person of minor without Court authority (NRS 159.215).
- **Special Guardianships over Estate**: Insurance proceeds flowing to minor.

SPECIAL V. GENERAL GUARDIANSHIPS

Special Guardianship addresses persons with limited capacity -- able to independently make some but not all decisions relating to person and estate -- as defined by NRS 159.022.

General Guardianships apply to persons deemed incompetent – unable without assistance to make decisions relating to person or estate – as defined by NRS 159.023.

- Spectrum of Ward's Abilities/Limitations Must be Considered
- Guardian has Duty to Maximize Independence/Liberties of Ward
- Person of Limited Capacity may Voluntarily Petition for Guardianship (NRS 159.026).
- Order for Special Guardianship Must Define Duties (NRS 159.0801).

A physician renders an opinion about capacity but the determination of incapacity is only made by a court.



WORDS TO KNOW

GUARDIANSHIP

PETITION

NOTICE

JUDGE

WARD

ORDER

S.A.F.E

DUE PROCESS

CITATION

GUARDIAN

QUALIFICATIONS TO SERVE AS GUARDIAN

The guardian may be a person designated by Ward when Ward had capacity, a family member, a close friend, the Washoe County Public Guardian's Office or a professional guardian (an unrelated person who has received specialized training).

- At least one Nevada resident
- Adult
- A felony conviction or professional misconduct may preclude someone from being a guardian.
- Professionals must be certified

Ultimately, the Court appoints the guardian of a ward.

GENERAL GUARDIANSHIP

Process & Steps

1. Petition (NRS 159.044) (2009 Law – Physician's Certificate)
2. Set hearing date (Coordinate with Guardianship Court)
3. Citation (NRS 159.047-.048; 159.0145; 159.036)
4. Notice of Hearing (NRS 159.034)
5. Service/Due Process (NRS 159.047)
6. Proof of Service (NRS 159.034)
7. Request for Submission of Petition (Court Rules)
8. Hearing/Attendance of Ward at Hearing (159.0535)
9. Order Appointing Guardian
10. Bond (NRS 159.067-.071)
11. Letters of Guardianship - An official document issued by the County Clerk's office which, together with the Order appointing Guardian, is written evidence of the appointment of a guardian and the authority of the guardian to act for the ward. (NRS 159.073-.075)
12. Notice of Entry of Order (NRS 159.074)
13. Serve on Parties (NRS 159.074)
14. Proof of Service (NRS 159.034)

DUE PROCESS OF LAW

- A set course for judicial activities designed to protect the individual's legal rights.
- The guarantee of due process requires that no person be deprived of life, liberty, or property without a fair and adequate process.

NOTICE



WHO RECEIVES NOTICE OF GUARDIANSHIP PROCEEDINGS?

By Law the following individuals or entities must receive legal notice of guardianship proceedings

- The Proposed Ward
- Spouse
- Relatives w/in the second degree of consanguinity and step
 - Parents
 - Grandparents
 - Siblings
 - Children
 - Grandchildren
- Care provider, facility or hospital
- Nevada Medicaid
- Veteran's Affairs (for veterans only)
- Person(s) designated as Successor Trustees, Attorneys-in-fact

TEMPORARY GUARDIANSHIP

- This action is reserved for critical situations when there is imminent danger to the person or property of the individual. (NRS 159.052-.0525)
- Temporary guardianship gives the guardian the power to act for a temporary period of time.
- The temporary guardian's powers are limited to those necessary to address the emergency.

TEMPORARY EMERGENCY GUARDIANSHIP

Process & Steps

Criteria for temporary (emergency) guardianship are defined by state statute for specific purposes. They are only granted in special circumstances of **immediate harm or danger** to the ward and/or their assets. (NRS 159.052-.0525)

1. Petition (including Physician's Certificate with Needs Assessment/Compliance with Notice) and Proposed Order
2. Request for Submission (Court Rules)
3. Order Granting Temporary Guardianship (Valid for 10 days)
4. Letters of Temporary Guardianship
5. Notice of Entry of Order
6. Set extension hearing
7. Citation, Notice of Hearing
8. Service/Due Process
9. Proof of Service
10. Hearing/Order to Continue Temporary Guardianship (Valid for 30 days generally)
11. Notice of Entry of Order
12. Service/Due Process
13. Proof of Service

NEW 2009 LAWS

- Physician Certificate and Needs Assessment Requirement (NRS 159.044).
- Adoption of Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (NRS 159.1991), which addresses out of state guardianship matters.
- Registration of Foreign Guardianships (159.2025-.2027)
- Requirement to maintain all records and documents of ward for 7 years (NRS 159.19905)

I am the guardian.
What do I do now???



Who do I inform of the guardianship?

You may need to present a copy of your Letters of Guardianship to establish your authority to act on the ward's behalf.

- Care facilities
- Physicians/medical providers
- Social Security
- Financial Institutions
- Post Master (change of address requests)
- Medicaid
- Interested family/friends
- Relevant professionals (attorneys, CPA, investment advisor, etc.)

NRS 159.087 Recording letters of guardianship. Not later than 60 days after the date of the appointment of a guardian of the estate, the guardian shall cause to be recorded, in the official records of each county in which real property of the ward is located ***other than the county in which the guardian is appointed***, a copy, certified by the clerk of the court, of the letters of guardianship.

Decision Making

How do I make an important decision for someone else?

Two decision making theories

- Best interest-what is in the person's best interest at this time
- Substituted judgment-what the person may have wanted when competent and/or what is consistent with decisions they have made throughout their lifetime

Do they have previously recorded written wishes (advanced directive, living will, etc) to guide you?

Important paperwork

- Develop a record keeping system for important documents that pertain to the ward
- Should include: physicians, medical records, insurance, social security, final arrangement plans, income, tax, wills, trusts, advanced directives to physicians
- Keep a written record of actions taken by guardian

Guardianship of Person

Court Reporting Requirement

- The guardian of the person is obligated to file an Annual Report of Person with the court on a yearly basis. This is due to the court no later than 60 days from the anniversary of the appointment as guardian.
- Obtain forms for report from the Self Help Center or your attorney.



Guardianship of Estate

Court Reporting Requirements

- Filed Inventory and Record of Value showing all assets owned by the Ward within 60 days of appointment as guardian (NRS 159.085)
- Inventory is a snapshot of financial picture at beginning of guardianship
- Annual accounting (beginning balance, description of all income and all expenditures and ending balance) (NRS 159.176)
- If the Ward's assets are less than \$10,000, the Court may formally dismiss annual accounting



Managing the \$\$\$\$

Where do I start?

- Locate all assets (property, bank accounts, cash, investment accounts, personal property, real estate, etc)
- Determine all income sources
- Determine all outstanding debts
- Secure assets and income

Guardian of the estate is required to file an inventory of financial assets with the court.

Important Documents

The Guardian should secure such documents for safekeeping. Guardianship authority allows you to request copies from the issuing entities.

- Guardianship Documents
- Birth certificates
- Death Certificates
- Immigration Paperwork
- Marriage Certificates
- Stock Certificates
- Titles
- Deeds
- Veteran's Paperwork-DD-214

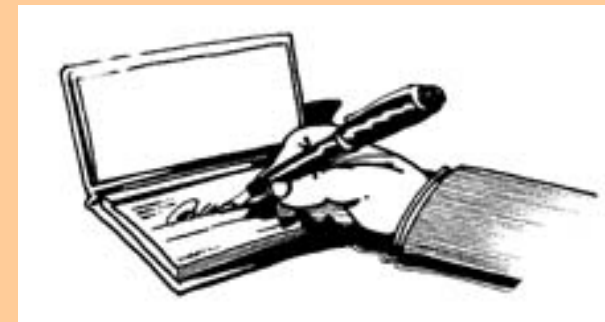
Day to Day \$ Management

- Set up a separate bank account (*take Letters of Guardianship*)
- “The guardianship of.....”, special designation that banks can put on account
- Account remains in the ward’s SSN#
- Keep the funds of the guardianship separate
- **DO NOT CO-MINGLE FUNDS!!!!**



Bill Paying

- Develop a traceable bill paying system (ledger system, computer financial management program)
- Keep written and legible records of expenses paid on behalf of a ward.
- Track and record all income received
- Keep all receipts for expenses paid
- Keep copies of cancelled checks, statements, invoices and bills.
- Develop a budget/spending plan



COURT APPROVAL

There are many decisions a guardian can make with their guardianship authority. There are some that **require** additional court approval **PRIOR** to acting.

Those may include but are not limited to:

- Sterilization of ward
- Sale of real estate and personal property (prior to sale)
- Out of state placement
- Borrow \$ from ward
- Attorney fees & guardian fees
- Invest in the property of ward
- Continue business of ward

Always consult your attorney and/or the court when in doubt!

Guardian Payment

- Per Nevada law a guardian may seek payment for the services they have provided.
- A guardian must keep detailed records of time spent and services provided
- **Guardian's fees must be COURT ORDERED, NEVER pay fees without a court order**
- Get guidance from an attorney or the court about requesting fees

Closing a guardianship

The law refers to the closing of the guardianship as “termination of the case”.

Sadly, a guardianship often ends as a result of the death of the person. On other occasions it may end because the individual has regained their ability to make their own decisions.

The guardianship remains open until the court orders the termination of the guardianship. The guardian is obligated to go through the legal steps of getting court approval to close the case.

I QUIT!!!!



On occasion a guardian may need or want to resign from their position.

- A guardian may not simply “quit” without oversight from the court.
- A formal petition must be filed with the court requesting to be released from your responsibility as guardian.
- You remain responsible for guardianship duties and the well being of your ward until you are formally discharged by the court.*

Questions??

