

GUARDIANSHIP

AND DECISION MAKING

OPTIONS FOR ADULTS WITH

DISABILITIES

OFFERED BY:

**NEVADA DISABILITY ADVOCACY AND
LAW CENTER**

THE PROTECTION AND ADVOCACY SYSTEM FOR NEVADA



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Nevada Disability Advocacy & Law Center (NDALC) is a private, statewide non-profit organization that serves as Nevada's federally-mandated protection and advocacy system for human, legal, and service rights for individuals with disabilities. NDALC was designated as Nevada's protection and advocacy system by the Governor in March, 1995.

Services provided by NDALC include, but are not limited to: information and referral services, education, training, negotiation, mediation, investigation of reported or suspected abuse/neglect, legal counsel, technical assistance, and public policy work.

NDALC has offices in Las Vegas, Reno, and Elko with services provided statewide. All services are offered at no cost to eligible individuals in accordance with NDALC's available resources and service priorities.

NOTICE

While this publication is intended to provide basic information, it is not legal advice. Attempts were made to ensure its accuracy but readers should direct questions concerning their specific situations to the Nevada Disability Advocacy and Law Center (NDALC), or a legal aid agency, or a private attorney.

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Introduction

Many questions come to mind when we realize that a loved one or someone we know can no longer care for themselves, or make necessary decisions. This Resource Guide is designed to help you find some answers, or sources for these difficult questions.

It discusses the law of adult guardianship in Nevada and explains when a guardian can be appointed to act for a person who lacks the capacity to make decisions for themselves. More importantly, this Resource Guide lists many alternatives to a formal guardianship, which may be more appropriate and less expensive, than a formal guardianship.



Chapter 1

Introduction to Guardianship

What is adult guardianship?

Guardianship is a legal proceeding in which a petitioner (usually a family member or friend) asks the court to find that a person is unable to manage their own affairs effectively because of a disability. The court then appoints someone to act for that person and make decisions affecting their person, estate, or both.

Why would a person need a guardian?

A person may need a guardian if they are unable to make everyday decisions due to the effects of a disease, or other disabling condition.

For example, a person may become too mentally confused or forgetful to care for themselves or to make arrangements to meet their physical needs; such as shopping and preparing proper meals. In this case, a guardian of the person may have to be appointed to arrange for appropriate care.

A "special guardianship" may be obtained if the adult can make some, but not all decisions necessary for their own care.

What are the different kinds of guardianship?

There are four (4) different types of guardianship in Nevada. Anyone asking the court to be named a person's guardian must specify what type of guardianship is sought. The court may either appoint a:

- (1) Guardian of the Person, or a
- (2) Guardian of the Estate,
- (3) or both,
- (4) Temporary Guardianship

One person can serve as both Guardian of the Person as well as Guardian of the Estate, or different people can take each role.

Additionally, in emergency cases, or in cases where an individual has no family member or friend to serve as guardian, a court may appoint a public guardian. And, depending on the court's determination, the Public Guardian office may be appointed to serve as Temporary Guardian, Guardian of the Estate, Guardian of the Person, or Guardian of the Person and Estate.

In general, a Guardian of the Person makes decisions about a person's medical care, housing, food, clothing, and other subjects that directly affect the person's activities of daily living (ADLs). In contrast, a Guardian of the Estate typically makes decisions about a person's money, income, property of any kind, stocks and bonds, and other financial matters.

CAUTION! Becoming the Guardian of the Estate does not give the guardian the absolute power to control the ward's assets and finances. The guardian must get the court's approval before spending

any of the ward's money or selling any property, and typically must put the ward's money in a "blocked account" where it cannot be accessed without a court order.

What is the effect of a guardianship?

Under Nevada law, the appointment of a guardian "does not modify any right of the individual with a disability unless the court has so ordered. In general, the ward keeps all the legal and civil rights guaranteed to all residents under the state's and the United States' Constitution, except those rights which the court specifically grants to the guardian.

These rights include, but are not limited to:

1. The right to be treated with dignity and respect.
2. The right to privacy, which includes the right to privacy of the body, and the right to private, and uncensored communication with others by mail, telephone, or personal visits.
3. The right to exercise control over all aspects of life the court has not delegated to the guardian.
4. The right to appropriate services suited to the ward's needs and conditions; including mental health services.
5. The right to have the guardian consider the ward's personal desires, preferences, and opinions.
6. The right to safe, sanitary, and humane living conditions within the least restrictive environment that meets the ward's needs.
7. The right to procreate.
8. The right to equal treatment under the law; regardless of race, religion, creed, sex, age, marital status, sexual orientation, or political affiliations.
9. The right for explanations of any medical procedures or treatment. This includes information about the benefits, risks, and side effects of the treatment, and any alternative procedures or medications available.
10. The right to have personal information kept confidential. This may include withholding certain information the ward may not want his or her family to know. The guardian may have to provide personal information to apply for benefits, or in emergency situations where the ward or others may be in danger, or if the information is required by law to be shared with agencies or health departments. Personal information may also be contained in the reports the guardian makes to the court, and which may be available for others to see.
11. The right to review personal records; including medical, financial, and treatment records.
12. The right to speak privately with an attorney, ombudsman, or any other advocate.

13. The right to petition the court to modify or terminate the guardianship. This includes the right to meet privately with an attorney or any other advocate to assist with this legal procedure.

14. The right to bring a grievance against the guardian, request the court to review the guardian's actions, request removal and replacement of the guardian, or request the court to restore rights if it can be shown the ward has regained capacity to make some, or all decisions. The guardian also has a responsibility to request the ward's rights be restored when there is evidence the ward has regained capacity.

Why avoid guardianship?

In general, the laws regarding Guardianship of the Person state that a guardian should be appointed only if there is no less restrictive alternative. In many cases, guardianship is absolutely necessary to protect the person from harm and to administer the estate that is in the person's name. However, it should be done only after other solutions have been considered and/or exhausted.



Chapter 2

Determining Competency or Capacity

Individuals who are 18 years of age and older have the right to make informed decisions about how they live their lives, and to control their own medical treatment. In order to make these decisions, a person must be “competent” or have the “capacity” to understand the consequences of these decisions.

These two terms are used interchangeably in the law and in this Resource Guide. Unfortunately, some individuals may have mental illnesses or cognitive impairments that at times impair their ability to make informed choices about important issues such as how to manage money or choose a home. Determining competency is important because the degree to which an individual is capable of making an informed decision relates to which decisions they can make.

Outside the context of health care decision-making and court-ordered guardianship, a formal determination of competency is not necessary. However, if a person is showing signs of confusion or forgetfulness, they should be evaluated by a health care provider for appropriate treatment. This chapter will provide information on competency and help to explain how a determination of competency is made.

What is capacity?

Mental capacity is a fluid concept that changes according to the circumstances of the individual and the decision to be made. A person's capacity to make a decision may depend upon the complexity of that decision, the decision-making strengths of the person (which may fluctuate over time), surrounding events, and the person's ability to communicate with those determining capacity.

There is no bright line rule dividing those who have the capacity to make decisions and those who do not. A person can also be competent to make some decisions, but not others.

For example, a person may be able to express their opinion about whom she trusts to handle money, but not be able to fill out an income tax form. They may be able to decide to get a flu shot, but not to decide which treatment is best for their breast cancer.

A diagnosis of mental illness or mental disorder does not automatically mean the person lacks the capacity to make all decisions. Because each person is different and each illness is different, capacity will differ in each case and must be determined individually by looking at evidence (or lack thereof) of the person's decision-making abilities.

How does the law define competency?

The term incompetent means an adult person who, by reason of mental illness, mental deficiency, disease, weakness of mind or any other cause, is unable without assistance, to properly manage and take care of himself/herself or his/her property, or both. **NRS 159.019**

An adult is of limited capacity if the person is able to make independently some, but not all of the decisions necessary for the person's own care and the management of the person's property. **NRS 159.022**

Regarding appointment of a guardian of the person:

A guardian of the person shall be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning their person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety. The guardian is responsible for personal and medical decisions only. **NRS 159.079**

Regarding appointment of a guardian of the estate:

The guardian of the estate is responsible to protect, preserve, manage and dispose of the estate in the individual's best interest. The guardian is responsible for financial decisions only. Responsibilities may include, but are not limited to: the sale of an individual's real or personal property, managing all income, filing annual accountings with the court, closing bank accounts, selling stock. **NRS 159.083**

Additionally under Nevada state law, a judge may grant an emergency order of temporary guardianship when the petitioner can show that:

- ❖ Proposed individual faces a substantial and immediate risk of financial loss or physical harm or needs immediate medical attention
- ❖ Proposed individual lacks capacity to respond to the risk of loss or harm or to obtain the necessary medical attention
- ❖ Petitioner has tried in good faith to notify the persons entitled to notice under **NRS 159.047**
NRS 159.0523

Proof of incompetency

Nevada guardianship law requires a “certificate of incapacity” be filed with the petition for guardianship of an alleged person with a disability.

This form tells the judge about the proposed ward’s medical and/or mental condition. It may also excuse the proposed ward from attending the hearing.

This certificate must be completed by one of the following health care providers:

- ❖ A physician or psychiatrist licensed to practice in the State of Nevada
- ❖ A physician or psychiatrist employed by the Department of Veterans Affairs, or by
- ❖ Providing a letter signed by a governmental agency in the State of Nevada which conducts investigations

The certificate must verify that the person is unable to make or communicate responsible decisions about their person or estate. It must also list the person’s physical and mental diagnosis and the Certificate of Incapacity must be filed at least one week before the court date.

Does a person who has trouble making certain decisions always need a guardian?

No. As we will discuss in the next chapter and throughout this Resource Guide, there are many ways to meet the needs of these individuals without filing for guardianship.



Chapter 3 Alternatives to Guardianship

Sometimes it is absolutely necessary to seek a guardian for a person who has a disability. In those cases, it is a welcome solution to a very difficult problem. However, in other cases there may be alternative ways to solve the problem. These alternatives may not be the easiest course, or the least expensive, but here are several reasons why alternatives to guardianship are preferable if they are possible.

What are reasons to seek alternatives to guardianship?

- ❖ First, the appointment of a guardian is a serious measure. Guardianship has the potential to deprive a person of the right to make personal and financial decisions.
- ❖ Second, the law requires a guardian of the person be appointed only when no less restrictive form of intervention is available, which is consistent with the person’s welfare and safety.

- ❖ Third, filing for guardianship can be costly and time consuming. Two attorneys (one representing the petitioner and one representing the alleged person with a disability) may be needed. In some cases, expert witness fees for testimony of physicians, psychologists, or social workers may also be necessary. Moreover, once appointed, the guardian will have an obligation to file annual reports with the court.

For these reasons, you should consider alternative ways to take care of the needs of a person with a disability **before** filing for guardianship.

What alternatives and resources are available to help with day-to-day tasks?

Start by identifying the specific problems. Then, consider whether alternatives to guardianship can address these problems. For example, some money management problems may be addressed with a representative payee to handle benefits, or with a bank system for automatic bill payment. Nevada Medicaid Waivers and community social services programs can help with assistance in the home to keep a person living independently.

- A. **Circle of Support** - An informal network of friends and family can often be sufficient to provide the supports and assistance a person with disabilities requires, and should be used whenever possible. Friends and family can work together to ensure an individual's needs are being met. For example, one person can be responsible for taking the individual shopping. Another support person may "check-in" with the individual on a weekly basis until all the needs are being over seen. This is perhaps the easiest of the alternatives to guardianship.
- B. **Community Social Services Programs and Supports** - There are many public and private services that help a person with a disability stay independent in their home and community and it is not necessary for someone to have a guardian in order to take advantage of these services. Not all services are available in all communities, and some may have long wait lists. Clark County Social Services and Nevada's Aging and Disability Services Division can provide information about the available services, as well as the eligibility and application process. Below are some examples of community programs to consider.
 - 1. **Case Management** - State and local agencies, as well as private organizations may provide case management services to individuals with disabilities. The goal of case management is to enhance the ability of the individual with a disability to exercise choice, make informed decisions, and fully participate as members of the community. Case management services consist of the following processes: 1) assessment; 2) development of an individual comprehensive service plan; 3) coordination and facilitation of services; 4) monitoring of services, and 5) crisis assistance. You may qualify for case management services from the following local providers (NOTE - this is not an all-inclusive list):

Southern Nevada Adult Mental Health Services (SNAMHS) outpatient coordination programs include the following:

- ❖ **Service Coordination** - Offers assistance in obtaining benefits and coordinating available services throughout the community. Coaching and various support programs keep individuals engaged in treatment and recovery.

- ❖ Intensive Service Coordination - An increased level of service coordination for individuals diagnosed with a mental illness who also have a felony legal involvement. Individuals are referred by the judicial system or agency programs. Intensive service coordination assists high-need individuals in getting services necessary to live in the community, as well as understanding and complying with orders of the court.
- ❖ Program for Assertive Community Treatment (PACT): Provides a specialized, multidisciplinary team approach to service coordination and mental health treatment. PACT focuses include elevating individual levels of functioning and improving quality of life for individuals with a serious mental illness. PACT is a mobile unit and services are provided wherever necessary in the community.

Contact SNAHMS to inquire about eligibility for services at 702-486-6000, 6161 W Charleston Blvd., Las Vegas NV 89146 or on their website at www.dpbh.nv.gov

Mojave Mental Health Services (MMHS)

- ❖ Services are provided for individuals (with fee-for-service) under Nevada Medicaid or Medicare. Eligibility for each service is determined through a comprehensive clinical assessment. Case management offers intensive service coordination for qualified adults and a dedicated and resourceful team of case managers assist individuals in gaining access to medical, social, educational and other support services; including housing and transportation needs.
- ❖ Components of the service include assessment, care planning, referral and monitoring. Case managers are committed to helping individuals achieve independence.
- ❖ The MMHS case management program also provides support for Clark County's Mental Health Court Program. Clients who voluntarily agree to participation, and have frequent jail and court appearances which are attributed to their psychiatric disability, will receive up to three years of intensive court and case management services. These services are provided in order to stop the revolving door of psychiatric relapse behaviors, and jail.

You may contact MMHS to request assistance at 702-968-5000, 4000 E Charleston Blvd. Suite 130, Las Vegas, NV 89104 or email them at lgruner@medicine.nevada.edu

Desert Regional Center (DRC)

- ❖ DRC supports individuals with developmental disabilities by facilitating independence through choice. DRC assists individuals with disabilities by helping them with their life plan, arranging support services to help them achieve what they want, and regularly monitoring to see if the services provided are satisfactory. DRC may be able to provide community support through one of the following programs.
- ❖ Home and Community Based Waiver - Nevada's Waiver for Persons with Intellectual Disabilities and Related Conditions offers home and community-based services to assist eligible recipients who, without services, would require institutional care in an Intermediate Care Facility for Persons with Mental Retardation (ICF/MR). Nevada's Division of Mental

Health and Developmental Services (MHDS) administers this waiver program in conjunction with the Division of Health Care Financing and Policy (DHCFP).

- ❖ Residential Support - Offers a variety of available options to help people make choices on where they want to live. Choices can include living at home with their family, living by themselves, or living with roommates. Supports will vary depending on what an individual requests, needs, and can afford.
- ❖ Service Coordination - Helps to develop a plan based on the individual's interests and personal goals. Service Coordination can assist the individual in getting eligible services through public and private agencies.

Contact the DRC Intake Coordinator by phone at 702-486-7850. The Intake Coordinator will schedule an office appointment to assist with the application process and answer questions.

Clark County Social Services (CCSS)

- ❖ CCSS can provide a safety net for at risk individuals through a variety of services to qualifying individuals.
- ❖ Case Management - a process to determine the individual's challenges to self-sufficiency which utilizes their strengths along with community resources to address those challenges.

All CCSS services and referrals are provided based upon an assessment of need and/or program criteria. For more information, contact the main CCSS office at 702-455-4270, 1600 Pinto Lane, Las Vegas, NV 89106, or on their website at <http://www.clarkcountynv.gov/social-service/Pages/default.aspx>

Nevada Medicaid Case Management Services (Nevada Medicaid Service Manual – Chapter 2500)

- ❖ There are eight target groups eligible to receive this service. These groups are: (1) children and adolescents who are Non-Severely Emotionally Disturbed (Non-SED) with a mental illness; (2) children and adolescents who are Severely Emotionally Disturbed (SED); (3) adults who are Non-Seriously Mentally Ill (Non-SMI) with a mental illness; (4) adults who are Seriously Mentally Ill (SMI); (5) persons with intellectual disabilities or related conditions; (6) developmentally delayed infants and toddlers under age three; (7) Juvenile Probation Services (JPS), and (8) Child Protective Services (CPS).
- ❖ The intent of case management services is to assist eligible recipients, as defined under the State Plan, in gaining access to needed medical, social, educational, and other support services including housing and transportation needs. Case management services are provided to eligible recipients who are residing in a community setting, or transitioning to a community setting following an institutional stay.

Nevada Medicaid Services Manual

<http://dhcfp.nv.gov/Resources/AdminSupport/Manuals/MSM/MSMHome/> Select Chapter 2500

Aid for Aids of Nevada (AFAN)

- ❖ Medical Case Management - AFAN offers Medical Case Management services designed to foster a client's sense of pride, independence and self-empowerment. Medical Case Managers assess client eligibility for Ryan White Part A, HOPWA (Housing Opportunities for Persons with AIDS), and other supportive services provided by AFAN. Service plans are intended to address the client as a whole; including medical and medication needs, mental health, finances, housing stability, support system, medical transportation and other areas as determined. AFAN's Medical Case Management team works closely with other HIV/AIDS service organizations and community based support systems through the use of referrals to address areas not available in-house.

For additional information AFAN may be reached at 702-382-2326, 1120 Almond Tree Lane, Las Vegas, NV 89104, or on their website at <http://www.afanlv.org/>

2. In-Home Aide Services – These programs provide aide services in a person's home for assistance with activities of daily living (ADLs), such as: dressing, bathing, transferring, grooming, eating, cooking, laundry, light cleaning, and shopping. In general, In-Home Aide Services allow a person with a disability to remain living at home, thus avoiding an unnecessary or premature move to a nursing home, or other out-of-home placement.

- ❖ **Home Healthcare Services** - Home healthcare provides a wide range of health care services that can be given in the home due to an illness or injury. Home healthcare is usually less expensive, more convenient, and just as effective as care received in a hospital, or skilled nursing facility. The home healthcare agency staff will have regular communication with the person with a disability, their doctor, and anyone else who assists with their care. If a person with a disability believes they would benefit from home healthcare services, they should speak with their physician and/or insurance provider. A list of home healthcare agencies can be obtained from a physician, Nevada 211, or the State of Nevada's Aging and Disability Services Division's – Aging and Disability Resource Center.
- ❖ **Personal Care Assistance (PCA)** - PCA services provide assistance and support for persons with disabilities, to live independently within the community. This includes the elderly and others with special healthcare needs. PCA services are provided in the recipient's home, or in the community when normal life activities take them outside the home. These services are non-emergency health related tasks done by qualified staff in a medically eligible beneficiary's home. Services include assistance with activities of daily living (ADLs) and household duties essential to the patient's health and comfort. An individual who believes they may benefit from PCA services should speak with their physician and/or health insurance provider for a referral. A list of PCA agencies can be obtained from a physician, Nevada 211, or the State of Nevada Aging and Disability Services Division's – Aging and Disability Resource Center.
 - **Clark County Social Services (CCSS)** - CCSS has a Homemaker/Home Health Aide/Alternative Health Care program. This program provides seniors and individuals with disabilities assistance with the following: grocery shopping, laundry, light housekeeping, light meal preparation, personal hygiene, and

prescription pick-up. For more information contact the main CCSS office at 702-455-4270, 1600 Pinto Lane, Las Vegas, NV 89106 or through their website at <http://www.clarkcountynv.gov/social-service/Pages/default.aspx>.

- **Nevada Aging and Disability Services Division (ADSD)** - ADSD offers the Personal Assistance Services (PAS) Program. PAS provides community-based, in-home services to enable adult persons with severe physical disabilities to remain in their own homes and avoid placement in a long-term care facility. The provision of home and community-based services is based upon the identified needs of the recipient and available funding. ADSD assists recipients with accessing other available services, as needed. For additional information contact ADSD at 702-486-3545, 1860 East Sahara Avenue, Las Vegas, NV 89104 or on their website at: http://adsd.nv.gov/Programs/Seniors/PersAsstSvcs/PAS_Prog/
- **Nevada Medicaid Personal Care Services Program (PCS) (Nevada Medicaid Service Manual – Chapter 3500)**

The objective of Medicaid PCS is to assist, support, and maintain recipients living independently in their homes. Medicaid PCS is also provided in settings outside the home; including employment sites. These services are provided where appropriate, medically necessary, and within service limitations.

Medicaid PCS may also be provided through the Nevada Medicaid's Home and Community Based Waiver for Individuals with Intellectual Disabilities (Chapter 2100), Home and Community Based Waiver for the Frail Elderly (Chapter 2200), or the Waiver for Persons with Physical Disabilities (Chapter 2300).

3. **Adult Day Care (ADC)** - This service provides planned care for dependent adults in a supervised, protective, congregate setting during some portion of a day. ADCs' services typically include social and recreational activities, counseling, nutrition, memory retention activities, music therapy, pet therapy, and arts and crafts.

Nevada Medicaid Adult Day Health Care (ADHC) - (Nevada Medicaid Service Manual – Chapter 1800)

- ❖ Medicaid ADHC programs provide medical services on a regularly scheduled basis as specified in a person's service plan. Medicaid ADHC services may include health and social services needed to ensure the optimal functioning of the participant. Services are generally furnished in blocks of four or more hours per day on a regularly scheduled basis. Services must take place in a community-based setting and not an institutional setting. For additional information, contact the Nevada Medicaid Member Services number listed on your Medicaid card.

Nevada Medicaid's Home and Community Based Waiver for Individuals with Intellectual Disabilities

- ❖ (Chapter 2100) Medicaid Waiver provides day habilitation services. These services are regularly scheduled activities in a non-residential setting, separate from the participant's

private residence or other residential living arrangement. Services include assistance with the acquisition, retention, or improvement in self-help, socialization and adaptive skills that include performing activities of daily living and community living.

4. **Respite Care** – Respite care programs provide funding to pay a trained person to stay for short periods with a person with a disability, thus allowing their caregiver a certain amount of time off.

Respite care services may be provided through the **Nevada Medicaid's Home and Community Based Waiver for Individuals with Intellectual Disabilities** (Chapter 2100), **Home and Community Based Waiver for the Frail Elderly** (Chapter 2200), or the **Waiver for Persons with Physical Disabilities** (Chapter 2300). Other agencies may also offer respite care services. For assistance in locating one, contact the Aging and Disability Resource Center for the State of Nevada at 702-364-2273 or at their website www.nevadaadrc.com

5. **Meals on Wheels** – Many community organizations and programs offer Meals on Wheels to qualifying individuals. The **Nevada Medicaid's Home and Community Based Waiver for Individuals with Intellectual Disabilities** (Chapter 2100), **Home and Community Based Waiver for the Frail Elderly** (Chapter 2200), and the **Waiver for Persons with Physical Disabilities** (Chapter 2300) offer meals on wheels to their recipients.
6. **Transportation** – Rides to medical appointments and other activities, such as shopping, are often difficult to arrange for someone who has a disability. Transportation assistance may be obtained through one or more of the following programs:

Regional Transportation Commission (RTC) – The RTC Paratransit Service is a shared-ride, door-to-door program available for those who are functionally unable to independently use the RTC's fixed-route system either all of the time, temporarily, or under certain circumstances. This service is available to customers who have been deemed eligible through an evaluation process, which is based on one's ability to use (or not use) the fixed-route system. This is determined through an in-person functional ability assessment process. To apply for Paratransit services call 702-228-4800.

RTC Mobility Training (MT) - MT is designed to help Southern Nevadans, especially senior residents and persons with disabilities, to move more independently throughout the community. Participants will learn how to best utilize RTC fixed route transit services, providing them with independence and the freedom to travel to various destinations. MT is a free, one-on-one or group training program. For more information on the MT program call 702-676-1767, TDD 702-676-1834, or go to their website at: <http://www.rtcnv.com/transit/paratransit/>

Nevada Medicaid Transportation - Transportation for medical appointments may be provided as a Nevada Medicaid service (Chapter 1900), or through one of the Nevada Medicaid Waivers; Home and Community Based Waiver for Individuals with Intellectual Disabilities (Chapter 2100), Home and Community Based Waiver for the Frail Elderly (Chapter 2200), or the Waiver for Persons with Physical Disabilities (Chapter 2300). For more information contact the Member services number on your Medicaid card.

Nevada Aging and Disability Services Division (ADSD) – ADSD offers a Taxi Assistance Program (TAP). TAP provides discounted taxicab fares to qualified individuals, age 60 and older, and persons of any age with a permanent disability through coupon booklets that are accepted by all taxicab companies in Clark County. To complete an application contact Las Vegas Regional ADSD Office at 1860 E. Sahara Ave., Las Vegas, NV 89104, 702-486-3581, or on their website at:
http://adsd.nv.gov/Programs/Seniors/TAP/TAP_Prog/

Some community programs offer transportation to their program. When attending a program, such as an Adult Day Care, always ask what types of transportation services they offer. Additional transportation resources may be located by contacting the Aging and Disability Resource Center for the State of Nevada at 702-364-2273 or at their website www.nevadaadrc.com, or by calling Nevada 211 to request information on transportation resources.

- 7. Food and Prescription Drug Deliveries** – Deliveries of prescription drugs to the home of an individual can often be arranged with local stores and pharmacies. Prescriptions may also be obtained through mail-order services.

What resources are available to help with alternative housing arrangements?

Assisted Living Program is a residential or facility-based program for individuals who have a physical or cognitive impairment, and who need help with one or more activities of daily living such as personal care and mobility, meal preparation, and household chores. Assisted living programs provide individuals with disabilities with housing and supportive services. Below are some examples of community programs to consider (NOTE - this is not meant to be an all-inclusive list):

Southern Nevada Adult Mental Health Services (SNAMHS) - SNAMHS provides a range of community housing and assisted living options for individuals with serious mental disorders. Various levels of residential support and direct care are based on individual capacity for independent living. Alternative living arrangements include family group homes, supported living apartments, substance abuse treatment facilities, Housing & Urban Development (HUD) programs, and specialized rehabilitation homes.

Mojave Mental Health Services (MMHS) - MMHS case management team will assist an individual in evaluating and applying for all supported living arrangements available.

Desert Regional Center (DRC) - DRC offers a variety of available options to help people make choices on where they want to live. Choices can include living at home with their family, living by themselves or living with roommates. Supports will vary depending on what an individual requests, needs, and can afford.

Golden Rainbow - a non-profit organization providing housing for people with HIV/AIDS. The Affordable Housing Program is designed for people living with HIV/AIDS to provide long-term and transitional housing to those affected by HIV/AIDS, who would otherwise have no place to call home. Golden Rainbow may be contacted at 702-384-2899, 714 E. Sahara Ave. Suite 101, Las Vegas NV 89104, or at their website: <http://www.goldenrainbow.org/>.

Nevada HAND, Inc. - a non-profit organization that plans, develops and manages affordable apartment communities and affordable assisted living communities throughout the Las Vegas area for

seniors, individuals, and families. Nevada HAND's mission is to improve the lives of low-income individuals by providing affordable housing solutions and supportive services. View communities available in the Las Vegas area at <http://nevadahand.org/multi-family/>. They may also be contacted at 702-739-3345, for Relay Service: Dial 711, or 1-800-326-6868 (TTY/ASCII/HCO).

Accessible Space, Inc. (ASI) - ASI is a non-profit organization that provides housing and services for adults with physical disabilities. To view properties available in the Las Vegas valley area go to <http://www.accessiblespace.org/nevada-accessible-housing/>. For additional information contact ASI at 1-800-466-7722, for Relay Service: Dial 711.

Decisions about Medical Care

If the problem prompting a discussion about guardianship relates to medical care, options exist to help with this situation.

Power of Attorney for Health Care - A power of attorney for health care allows a person to name a health care agent to make health care decisions when they are no longer able. This type of legal document is also referred to as an "advance directive."

Health decisions covered by the power of attorney for health care include:

- ❖ Doctors and other health care providers
- ❖ Types of treatments
- ❖ Care facilities

It is important to choose an agent who understands the individual's wishes and is willing/able to act on behalf of the person.

Effective June 4, 2015, NRS 162A.860 was amended to include forms allowing adults with intellectual disabilities to create a power of attorney for health care and end-of-life decisions.

For more information, see the American Bar Association's website at <http://www.abanet.org/aging/toolkit/home.html>.

CARE ACT

The CARE Act was passed by the Nevada 2015 Legislature. The law is designed to help caregivers stay informed when a family member or friend is in the hospital, and be better prepared to take care of their loved one at home following the hospital stay. The CARE Act requires hospitals to do three things: 1) provide you the opportunity to designate a family caregiver; 2) Inform your caregiver when you are to be discharged to another facility or back home, and 3) Provide the caregiver with an explanation and demonstration of any medical tasks which will need to be performed at home, such as wound care or medication management.

What if a person cannot handle their money or estate?

There are several ways to manage money and/or an estate without going through the guardianship process. Some arrangements must be made before a person becomes incapacitated and others can be put in place after a person becomes incapacitated.

A. Representative Payee

What is a Representative Payee?

Guardianship of the property may be unnecessary if a person's income is mainly from Social Security, Supplemental Security Income, the Veteran's Administration, or from other government benefits. These agencies can appoint another person or agency to receive benefit checks for a beneficiary who is unable to manage their benefits on their own. The person appointed is called the representative payee. Once appointed, the representative payee can collect the beneficiary's monthly income and use it to pay their bills.

Representative payees are usually family members or friends, but service providers, public agencies and volunteer organizations can also serve as representative payees. Federal law limits those who may collect a fee for serving as a payee to only community-based, non-profit social services agencies that are licensed and bonded in the state.

To be named a representative payee, a person must: 1) apply to the agency paying the benefits, such as Social Security Administration; 2) have a physician sign a medical form that certifies the individual receiving the benefit check is not able to handle their own money, and 3) file the medical form with the agency paying the benefit. The agency will then determine if it is in the best interest of the beneficiary to have a representative payee. If the beneficiary does not object, the agency will send the monthly check to the representative payee, for the use of the beneficiary. The representative payee must open a bank account in both names and pay the beneficiary's bills and buy necessities for them from the monthly income. The representative payee must always act in the best interest of the beneficiary.

B. Power of Attorney

A guardian of the estate may not be necessary if a person with a disability writes, or has a written durable power of attorney. A power of attorney is a document that grants authority to a third party, called the "agent", to act in the place of the individual, called the "principal". "Durable" simply means the agent's authority is still valid if the principal becomes incapacitated.

A power of attorney must be written when a person is mentally competent. For some people with decreased mental capacity, it may be too late to write a power of attorney. However, others affected by confusion or an intellectual disability may be able to adequately express what they want. Even individuals who have been diagnosed with an early stage of Alzheimer's disease, a mental illness, or other disability may possess the necessary competency to execute a power of attorney. The person must be able to understand what property they have, the consequences of appointing an agent, and be able to clearly communicate their wishes, stating they want a certain person to handle their financial affairs. NRS 162A.010 – 162A.860

C. Banking Services

Banks often provide some money management services for their banking clients. It may be possible to arrange for the following services:

- ❖ Direct Deposit: A person's regular income, such as pension or Social Security checks, can be automatically deposited into the individual's account.
- ❖ Direct Payment: The bank can make direct payments from the individual's account for routine bills such as rent, mortgage payments, nursing home payments, and monthly utility bills. With the bank automatically paying these bills, the individual is relieved of having to remember to write checks for them each month.
- ❖ Personal Money Managers: If an individual has substantial funds, they can hire a personal money manager to receive funds and pay bills on their behalf.

Education

In Nevada you are considered to be an adult at age 18. This is also known as the age of majority. NRS 129.010

When an individual turns 18 years of age, while still attending school, the parent's rights will transfer to the student. Even after the parent's rights transfer to the student, any school notices which ordinarily are required to go to the parent must be provided to both the parent and the student. All other rights accorded to a parent under Individuals with Disabilities Education Act (IDEA) will transfer to the student. However, at the discretion of the student or of the School District, the parent could be invited to attend the Individualized Education Plan (IEP) meetings as "individuals who have knowledge or special expertise" regarding the student. The student and their parent are to be notified of the transfer of IDEA rights to the student through the IEP process, beginning when the student reaches the age of 17.

The parent's rights under IDEA do not transfer to the student if:

- a. the student is adjudged incompetent and a court appoints a guardian for the student; or
- b. the student's parent submits an application (Notice of Application to Represent the Educational Interests of a Special Education Student at the Age of Majority) to continue to represent their child's special education interests whose child participates in the State's alternate assessment.

A parent of a student with a disability, who has a significant cognitive impairment, and who participates in special education, may submit an application to represent the educational interests of the student. Such an application must be submitted at least 90 days before the date of which the pupil attains the age of 18 years. The application must include a signed statement by the parent declaring the following:

1. The parent believes that the student does not have the ability to provide informed consent with respect to their own educational program;
2. The student is at least 16 years of age;
3. The student has a significant cognitive impairment and participates in the alternate assessment developed by the State; and
4. The date on which the application is being submitted is not less than 90 days before the date on which the pupil attains the age of 18 years.

Clark County School District (CCSD) must respond within 30 days after an application is received. If CCSD approves the application for a parent to represent the education interests, the parent shall continue to represent the educational interests of the student until:

1. The student receives a standard high school diploma, or an adjusted diploma;
2. The student is no longer enrolled in a program of special education pursuant to NRS 388.440 – 388.5315; or
3. The parent elects to transfer the right to represent the educational interests to the student.

If a parent or the student with a disability disagrees with the decision made on an application by CCSD, the parent or student may file a complaint with the Department of Education pursuant to NAC 388.318.

If the complaint is filed before the date on which the student turns 18 years old, any rights which would have otherwise transferred to the student must remain with the parent; pending a final decision on the complaint. NAC 388.197 (2)



Chapter 4

Guardianship of the Person

We have previously discussed several alternatives to guardianship proceedings, although there is often no way to avoid a guardianship action. Perhaps all other alternatives have been tried and failed, or perhaps the situation is one for which there is simply no other solution. This chapter describes how to file for a guardianship of the person and explains when a public guardianship may be necessary.

How is a guardian of the person appointed?

A guardian of the person may be appointed by the court upon petition by an interested person. A petition is a document that contains the fundamental details of the case, and states what the court is being asked to do. Interested persons include the guardian of the estate, the heirs of the person with a disability, any governmental agency paying benefits to the person, or any person or agency eligible to serve as guardian of the person. A lawyer usually writes and files the petition in court.

Who will file the petition?

The petition can be filed by any interested person. A petition for the appointment of a guardian of the person can be found at the following link: <http://www.familylawselfhelpcenter.org/self-help/guardianship/overview/purpose-and-types-of-a-guardianship>.

What does the petition contain?

The petition contains all of the basic facts about the situation. The following is a list of the required contents of the petition for guardianship of the person:

- ❖ The petitioner's name, address, age, and telephone number;
- ❖ The petitioner's family or other relationship to the alleged person with a disability

CAUTION: People often think some relatives do not need to be notified because they have not been involved in the person's life, but this is incorrect. Even if family members have been absent or uninvolved, they are entitled to know about any proposed guardianship. Failure to notify them will delay the court proceedings.

- ❖ A brief description of the disability and how it affects the person's ability to function;
- ❖ The reasons why the court should appoint a guardian of the person and, if the subject of the petition is a person with a disability, allegations demonstrating an inability of that person to make or communicate responsible decisions concerning their person; including provisions for health care, food, clothing, or shelter, because of a disability or disease, and a description of less restrictive alternatives that have been attempted and have failed;
- ❖ If a guardian has been appointed for the alleged person with a disability in another proceeding, the name and address of the guardian and the court that appointed the guardian. If a guardianship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court;
- ❖ A list of (a) the name, age, sex, and address of the alleged person with a disability, (b) the name and address of the person(s) with whom the person with a disability resides, and (c) if the person with a disability resides with the petitioner, the name and address of another person on whom service can be made;
- ❖ The name, address, telephone number, and nature of interest of all other interested persons and all other persons exercising control of the alleged person with a disability, to the extent known, or reasonably ascertainable;
- ❖ If the alleged person with a disability is represented by an attorney, the name and address of the attorney;
- ❖ A statement indicating physicians' certificates are attached, or if not, why not;
- ❖ If the petition also seeks a guardianship of the estate, the additional information regarding the property the person owns, or to which the person is entitled;
- ❖ A statement of the relief sought. **NRS 159.034**

Will there be a hearing?

In all guardianship cases there will be a hearing before a judge, or jury, on the facts presented in the petition. The petitioner has the burden of proof and must present clear and convincing evidence of the need for guardianship of the person. In a guardianship of the person case, the petitioner must prove:

- ❖ the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning their person; including provision of health care, food, clothing or shelter;
- ❖ this lack of capacity is caused by mental disability, disease, or addiction to drugs; and

- ❖ that no less restrictive form of intervention is available and consistent with the person's welfare and safety.

Additionally, the petitioner must also present evidence that the proposed guardian is fit and proper to be appointed, is capable of carrying out the responsibilities of a guardian, and no one of higher priority is available.

Who may be appointed guardian of the person?

Becoming a guardian is a big responsibility. There are many things guardians must do to make sure the ward is taken care of, and there are many things guardians must report back to the court. There are also many things a guardian cannot do without first getting the court's permission.

Non-Nevada Residents can apply to be a guardian. However, there may be extra requirements for non-resident guardians to ensure the safety of ward.

Qualifications of a Guardian: any qualified person or entity the court finds suitable may serve as a guardian. A person is not qualified to serve as a guardian who:

1. Is incompetent.
2. Is a minor.
3. Has been convicted of a felony; unless the court determines that such conviction should not disqualify the person from serving as the guardian of the ward.
4. Has been suspended for misconduct or disbarred from:
 - (a) The practice of law;
 - (b) The practice of accounting; or
 - (c) Any other profession which:
 - I. Involves, or may involve the management or sale of money, investments, securities or real property; and
 - II. Requires licensure in this State, or any other state, during the period of the suspension or disbarment.
5. Has been judicially determined, by clear and convincing evidence, to have committed abuse, neglect or exploitation of a child, spouse, parent or other adult, unless the court finds that it is in the best interests of the ward to appoint the person as the guardian of the ward.

NRS 159.059

What are the powers and duties of a guardian of the person?

- ❖ Provide proper care, maintenance, education, and support.
- ❖ Supply food, clothing, shelter, and necessities.
- ❖ Authorize medical, surgical, dental, psychiatric, and psychological care (although some medical treatments, such as experimental treatments, require court approval).
- ❖ Make sure the ward is properly trained and educated, and that the ward has the opportunity to learn a trade, occupation, or profession.

- ❖ File an Annual Report of the Guardian each year letting the court know how the ward is doing.

What the guardian cannot do without court approval?

A guardian does not have complete power to make all decisions for the ward. There are many things a guardian cannot do without first getting the court's permission; especially when it comes to the ward's finances. The "Guardian's Acknowledgement of Duties" includes a section titled "Court Authority" where the full list of items requiring prior court approval is listed. The most common items first requiring court permission include:

- ❖ Moving the ward out of the State of Nevada.
- ❖ Placing the ward in a secured, residential, long-term care facility.
- ❖ Spending or investing the ward's money. The guardian can ask the court to approve a monthly budget to pay the ward's monthly expenses.
- ❖ Selling the ward's home, or any real property.
- ❖ Making or changing the ward's last will and testament, or changing any beneficiaries.
- ❖ Terminating the guardianship. The guardian usually cannot be released from his/her duties unless the ward has died, regained competency, or the guardianship is over a child who has turned 18.

Life Threatening Medical Treatment

The court must authorize the guardian's decision to consent to medical treatment that poses a substantial risk to the life of the person with the disability.

For example, a guardian would have to get court authorization to consent to major heart surgery, or to refuse a feeding tube for a person with Alzheimer's disease.

Commitment to a Mental Health Facility

The guardian of an adult person with a disability does not have the authority to commit that person to a psychiatric facility without an involuntary admission proceeding.

Must a guardian of the person file an annual report?

Yes. A guardian of the person must file a report with the court every year. The report is a means for the court to supervise the guardian's actions, to verify the needs of the person with the disability are being met, and to question whether the guardianship should be modified or terminated. There is a standard annual report form the guardian can obtain from the Family Court office.

Is a guardian of the person entitled to a fee?

No. A guardian of the person is not entitled to a fee from the person's funds for their services unless they are also providing care and maintenance to the person. In that case, the guardian of the person

may ask the guardian of the property for reimbursement for such things as the cost of the person's room and board.

Can a court remove a guardian of the person?

Yes. If a guardian fails to perform the duties of that position appropriately, they may be removed or subject to other sanctions; either on the court's own initiative, or on the petition of an interested person. If an interested party files such a petition, the court will set a hearing date. If the court finds grounds for removal as a result of the hearing, it may remove the guardian and/or require the guardian to perform any neglected duties, as well as impose other sanctions as the court deems appropriate.

When does a guardianship of the person end?

If termination is because of the cessation of the disability that prompted the appointment of a guardian, or other good cause, notice and a hearing are required. If the guardian discovers grounds for termination may exist, they must file a petition requesting termination. The person with a disability, or any other interested party, may file a petition to terminate at any time after discovering grounds for termination may exist.

If the cause for termination is the cessation of the disability that prompted the appointment of the guardian, a certificate attesting to the cessation of the disability, signed by a physician who has examined the person must be attached. **NRS 159.1905**

What does the Clark County Public Guardians Office do?

The Clark County Public Guardian's Office is lawfully invested with the duty of taking care of individuals who are legally determined to be incapable of taking care of themselves. The office is court-appointed to this duty when no family members or friends are able, willing or appropriate to serve on behalf of the proposed individual, who cannot function in his or her daily environment, make proper health care or financial decisions, or perform basic self-care tasks, such as feeding and bathing. This important public service is critical in assisting those with cognitive impairment.

In all cases, the role of a court-appointed guardian is to protect the individual under guardianship, look out for their best interests, and ensure the highest quality of care possible given the individual's health, as well as their personal and financial resources. By protecting the individual, we minimize unnecessary loss to community services and vendors. **NRS Section 253**



Chapter 5 Guardianship of the Estate

A court can appoint a guardian of the estate to manage funds, do banking, pay bills, sell assets, settle claims, and generally act as an estate manager for someone who cannot act for themselves. This chapter will provide more information on the role and responsibilities of a guardian of the estate.

How is a guardian of the estate appointed?

A guardian of the estate may be appointed by the court upon petition by an interested person. Interested persons include the guardian of the person, the heirs of the individual with a disability, any governmental agency paying benefits to the person, or any person or agency eligible to serve as guardian of the estate.

Who will file the petition?

As with the guardianship of the person, the petition for guardianship of the estate can be filed by any interested person. A petition for the appointment of a guardian of the estate can be found at the following link: <http://www.familylawselfhelpcenter.org/self-help/guardianship/overview/purpose-and-types-of-a-guardianship>.

What does the petition contain?

Like the petition for guardianship of the person, the petition generally contains all of the basic facts of the case. The following is a list of the required contents of a petition for Guardian of the Estate:

- ❖ The petitioner's name, address, age, and telephone number;
- ❖ The petitioner's family, or other relationship to the alleged person with a disability;
- ❖ A brief description of the alleged disability;
- ❖ The reason(s) why the court should appoint a Guardian of the Estate and allegations demonstrating the inability of the alleged person with a disability to manage their own property and affairs effectively, because of physical or mental disability or disease.
- ❖ An identification of any instrument nominating a guardian for the alleged person with a disability;
- ❖ If a guardian has been appointed for the alleged person with a disability in another proceeding, the name and address of the guardian and the court that appointed the guardian. If a guardianship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court;
- ❖ The name, age, sex, and address of the alleged person with a disability, the name and address of the persons with whom the alleged person with a disability resides, and if the alleged person with a disability resides with the petitioner, the name and address of another person on whom service can be made;
- ❖ To the extent known or reasonably ascertainable, the name, address, telephone number, and nature of interest of all interested persons and all others exercising any control over the property of the estate;
- ❖ If the alleged person with a disability is represented by an attorney, the name, address, and telephone number of the attorney.

- ❖ The nature, value, and location of the property of the alleged person with a disability;
- ❖ A brief description of all other property in which the alleged person with a disability has a concurrent interest with one or more individuals;
- ❖ A statement indicating all the exhibits required by law are attached or, if not attached, the reason they are absent;
- ❖ A statement of the relief sought.
- ❖ Certificate of competency

Will there be a hearing?

Yes - In all guardianship cases there will be a hearing before a judge or jury on the facts presented in the petition. The petitioner has the burden of proof and must present clear and convincing evidence of the need for guardianship of the person. In a guardianship of the person case, the petitioner must prove:

- ❖ the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning their person; including provision of health care, food, clothing or shelter;
- ❖ this lack of capacity is caused by mental disability, disease, or addiction to drugs; and
- ❖ no less restrictive form of intervention is available and consistent with the person's welfare and safety.

Additionally, the petitioner must also present evidence that the proposed guardian is fit and proper to be appointed, is capable of carrying out the responsibilities of a guardian, and no one of higher priority is available.

Who may be appointed guardian of the estate?

Becoming a guardian is a big responsibility. There are many things guardians must do to make sure the ward is taken care of, and many things guardians must report back to the court. There are also many things a guardian cannot do without first getting the court's permission.

Qualifications of guardian: any qualified person or entity the court finds suitable may serve as a guardian. A person is not qualified to serve as a guardian who:

1. Is an incompetent.
2. Is a minor.
3. Has been convicted of a felony, unless the court determines that such conviction should not disqualify the person from serving as the guardian of the ward.
4. Has been suspended for misconduct or disbarred from:
 - (a) The practice of law;
 - (b) The practice of accounting; or
 - (c) Any other profession which:

- I. Involves or may involve the management or sale of money, investments, securities or real property; and
- II. Requires licensure in this State or any other state, during the period of the suspension or disbarment

5. Has been judicially determined, by clear and convincing evidence, to have committed abuse, neglect or exploitation of a child, spouse, parent or other adult, unless the court finds it is in the best interests of the ward to appoint the person as the guardian of the ward.

NRS 159.059

What are the powers and duties of a Guardian of the Estate?

- ❖ Protect, preserve, manage, and dispose of the estate of the ward according to law and in the best interest of the ward.
- ❖ Use the ward's estate for the proper care, maintenance, education, and support of the ward and any person the ward owes a legal duty of support.
- ❖ File a Proof of Blocked Account form if the court ordered a blocked account.
- ❖ Provide an Inventory of Assets within 60 days of being appointed the guardian.
- ❖ File an Annual Accounting detailing the estate's income, assets, and expenses. A hearing is also required for the judge to review and approve the accounting.

TIP: You can attend a Free Guardianship Class to learn the basics of guardianship law and the court procedures. Classes are available to anyone, regardless of income, and regardless of whether you have an attorney. You will receive a class manual and some great tips to help you represent yourself. Visit Free Classes at <http://www.lacsn.org/what-we-do/free-classes> for more information.

Does a guardian have to post a bond?

A guardian shall, before entering upon their duties as guardian, file with the court clerk a bond. A bond is a kind of insurance policy that guarantees that, if the guardian mishandles the person's funds, the bonding company will cover the loss. Joint guardians may unite in a bond to the ward or wards, or each may give a separate bond. If there are no assets of the ward, no bond is required of the guardian. **NRS 159.065**

What reports must a guardian make to the court?

The guardian of the estate must file an inventory of all property within 60 days of being appointed guardian. Each item must be clearly described and the fair market value of each item must be stated. The guardian must also file an Annual Accounting one year after being appointed, and every year after that.

What is an accounting?

The guardian must keep records of everything they do with the money and property subject to the guardianship order. The accounting must contain the following:

- ❖ A description of all assets of the person and where the assets are located.
- ❖ A summary of all expenses since the last report was filed, the current balance of bank accounts, and the value of the person's assets.
- ❖ A list of all property bought or sold, and the names of the person who bought or sold the assets.
- ❖ A summary of all income the person with the disability received.

The trust clerk for the court where the guardianship is filed can supply a form for the accounting. The guardian must swear the information they are giving is true.

Who owns the property—the guardian or the person with the disability?

The guardian holds legal title to the property after they are appointed, but can only use the property to provide for the best interest of the person with a disability. The guardian may not use the person's property to benefit the guardian. If the exercise of the guardian's power is improper, the guardian is liable for breach of their fiduciary duty to the person with the disability(ies), or to interested persons for resulting damage or loss to the same extent as a trustee of an express trust.

Is a guardian of the estate entitled to a fee?

Yes. The guardianship statute allows the guardian of the estate can receive a fee for services provided each year. The guardian is entitled to the same compensation and reimbursement for actual and necessary expenses as the trustee of a trust. No petition or hearing is required to entitle the guardian to compensation and expenses. Upon the petition of any interested person and upon a finding by the court that unusual circumstances exist, the court may increase or decrease compensation.

Can a court remove a guardian of the estate?

Yes. If a guardian of the estate fails to perform his/her duties appropriately, they may be removed or may be subject to other sanctions on the court's own initiative, or on the petition of an interested person. If an interested party files such a petition, the court will set a hearing date. If the court finds grounds for removal as a result of the hearing, it may remove the guardian and appoint a substitute or successor guardian. The removed guardian must file a final accounting and deliver all property to the substituted, or successor guardian. The court may also disallow any commissions from the time the default began, require the guardian to perform the neglected duties, and/or impose other sanctions it deems appropriate.

When does a guardianship of the estate end?

Guardianship of the property ends upon one of the following conditions:

- The cessation of the disability that prompted the appointment of a guardian;
- The individual's death; or

- Any other good cause for termination.

The termination petition must be signed and verified, and include a description of the petitioner's interest in the estate, the name and address of each person entitled to notice, a statement of facts establishing grounds for termination, and documentation of those grounds (such as a medical certificate or a death certificate). If the guardian is the petitioner, they must submit a final accounting and a proposed final distribution of any remaining assets. If the petitioner is someone else, the guardian must file a final accounting as directed by the court.

Termination of the appointment of a guardian ends that person's rights and powers pertaining to the office of guardian of the estate. Unless the court orders otherwise, the guardian whose appointment has ended has the duty to perform acts necessary to protect the estate and deliver the property to the successor guardian. Termination of the appointment neither discharges the former guardian from liability for transactions or omissions that occurred before the guardianship ended, nor relieves them of the duty to preserve, account for, and deliver the estate's property to the successor guardian.



Chapter 6 Temporary Guardianship

What if there is not time to follow normal guardianship procedures?

When the situation is urgent and a guardian must be appointed immediately, the law provides for the appointment of a temporary guardian. Temporary procedures can be used when a person is living in conditions that pose substantial risk of death, or serious physical harm to themselves or others.

For example, if a person is questionably competent, is living in a home with no heat, refuses to leave the home, and frigid weather is predicted, someone may petition to have a temporary guardian appointed to remove the person to a safe place.

Additionally, sometimes a person needs medical treatment that is not urgent, but should not be delayed for the two to three months it takes to appoint a guardian of the person. In this situation, a temporary guardianship may also be the best solution.

For example, a person may need a heart bypass operation to correct serious heart disease. This procedure would not meet the definition of emergency care, but it should not wait. If the person cannot consent to the operation because they are incapable of making informed decisions, this would be an appropriate case for a temporary guardianship.

What is the procedure for a temporary guardianship?

The procedure in a temporary guardianship case is similar to that in a standard guardianship case, except the process is expedited.

To begin a case, an interested person files a petition with the court requesting it authorize temporary protective services. As with the other guardianship petitions, you should speak with an attorney before filing a petition. The petition must contain the following:

- ❖ The name and address of the petitioner and the petitioner's relationship to the person alleged to be in need of temporary guardianship;
- ❖ The name, address, and age of the person alleged to be in need of temporary guardianship, and the name, address, and age of the proposed temporary guardian;
- ❖ A brief description of the disability;
- ❖ The proposed protective services;
- ❖ The reason for seeking the assumption of jurisdiction by the court and for the relief sought;
- ❖ A statement of reasons why the petitioner believes: (a) the person alleged to be in need of a temporary guardianship is living in conditions presenting a substantial risk of death or immediate and serious physical harm to that person or others; (b) the person alleged to be in need of a temporary guardianship lacks the capacity to make or communicate responsible decisions; and (c) no person authorized by law or court order to give consent is available to consent to emergency protective services;
- ❖ An explanation of steps taken by the petitioner to obtain the consent of the person alleged to be in need of temporary guardianship to the proposed services, and the response of the person; and
- ❖ If the person alleged to be in need of temporary guardianship is represented by an attorney, the name and address of the attorney.

It is not necessary to attach physician's certificates to the petition as it is in a standard guardianship of the person filing. However, the judge will require medical evidence of the person's incapacity.

NRS 159.0523



Chapter 7

Where to get Help

County Family Law Self-Help Center

The Family Law Self-Help Center is located on the first floor of the Family Courts and Services Center at 601 North Pecos Road (on the corner of Pecos and Bonanza) in Las Vegas, Nevada. The center is open Monday through Friday from 8:00 a.m. to 4:00 p.m. (except holidays and other non-judicial days when the court is closed). Assistance is available to walk-in customers on a first-come, first-served basis. The center does not provide assistance over the telephone or via e-mail. However, recorded information is available at 702-455-1500 (voice), 800-326-6868 (TT/TDD). Additional information regarding their services is available online at: <http://www.familylawselfhelpcenter.org/>

Family Law Ask-A-Lawyer Program: The Legal Aid Center of Southern Nevada's Pro Bono Project has volunteer attorneys available to meet with self-represented people about their family law case. Attorneys are available for free, 15 minute private consultations to discuss family law issues related to divorce, custody, guardianship, adoptions, terminations of parental rights, and name changes. No children are allowed at the consultations.

The Family Law Ask-A-Lawyer Program takes place every Thursday afternoon from 2:00 p.m. to 5:00 p.m. at the Family Courthouse, located at 601 North Pecos, Las Vegas, NV. Space is limited, and you must register in advance in order to meet with an attorney. Sign up either in person at the Family Law Self-Help Center, or by calling 702-386-1070 x 1731 (phone signups begin Monday mornings at 8:30 a.m.).

Free Classes: Legal Aid Center of Southern Nevada and the William S. Boyd School of Law at UNLV have created a partnership program to help provide legal information to the community.

Boyd law students present informational classes about the following topics to help self-represented litigants understand how to present their case and represent themselves in court:

- Divorce •Paternity/Custody •Guardianship •Immigration
- Small Claims •Bankruptcy •Collection Proof Clinic •Foreclosure
- Criminal Record Sealing

At the end of the class, you may receive information on how to apply for a pro bono attorney to represent you in your case.

Some of the classes are taught in Spanish as well as English. For additional information about the free, legal information classes and to find a schedule of when the classes are offered, please visit the Legal Aid Center of Southern Nevada website or the UNLV Boyd School of Law website listed below.

Class Schedules and Manuals: For a current schedule of the free legal information classes, see the "Class Calendar" on the Legal Aid Center of Southern Nevada website at www.LACSN.org. You can also download the class manual for each of the free classes on that site at www.law.unlv.edu/free-legal-education

Class Registration: There is no need to register to attend the classes. However, if you need special accommodations to attend one of these classes, please call (702) 386-1070 at least 48 hours in advance of the class.

Family Mediation Center: After separating, parents sometimes have a hard time coming up with a visitation plan for the children. Parents must try mediation if they cannot work out a custody and visitation schedule on their own. The Family Mediation Center can help parents try to work out a plan for legal custody, physical custody, a weekly visitation schedule, a summer schedule, a holiday schedule, and vacation time.

Mediation is done privately. The mediator will meet with the parents together to see if the parents can come to an agreement. If the parents reach an agreement, the mediator will write up a "Parenting Plan." The parents (and their attorneys, if applicable) can review the plan and sign it if they agree to the terms. Then, the Parenting Plan is sent to the judge for approval.

There are fees for mediation, but the fees are on a sliding scale and payment arrangements are available.

The Family Mediation Center is located at the Family Courthouse and is open Monday – Friday from 7:00 a.m. – 6:00 p.m. (closed weekends and holidays). You can reach the Family Mediation Center by calling 702-455-4186. Additional information may be obtained by visiting:

<http://www.familylawselfhelpcenter.org/classes-programs/family-mediation-center>.

Legal Aid Center of Southern Nevada

Clark County Legal Services is a nonprofit organization providing free, community legal services to those in need.

725 E. Charleston Blvd.

Las Vegas, NV 89104

702-386-1070

702-386-1415 (TT/TDD)

<http://www.lacsn.org/>

National Guardianship Association (NGA)

NGA provides educational training, and networking opportunities for guardians, and about guardianship, to promote the highest levels of values, standards and ethics, and to ensure a nationally recognized standard of excellence. <http://www.guardianship.org/>

174 Crestview Drive

Bellefonte, PA 16823

Phone: 877-326-5992

Fax: 814-355-2452

Email: info@guardianship.org

Nevada's Aging and Disability Services Division (ADSD)

1860 E. Sahara Ave

Las Vegas, Nevada 89104

702-486-3545

www.adsd.nv.gov

Nevada Legal Services

Nevada Legal Services is a nonprofit law firm that assists low-income clients.

530 S. 6th St.

Las Vegas, NV 89109

702-386-0404 (voice)

866-432-0404 (toll free)

702-386-1059 (TDD)

www.NLSLAW.org

Pro Bono Programs

You may be able to obtain a free attorney (called a "pro bono" attorney) through the Pro Bono Project if you cannot afford to hire an attorney. The Pro Bono Project matches volunteer attorneys with litigants who need representation.

The Pro Bono Project: The Legal Aid Center of Southern Nevada's Pro Bono Project coordinates private attorneys who generously volunteer to provide free legal assistance to individuals who cannot afford an attorney. While the attorneys do not charge the clients their hourly rates, the clients are responsible for any costs in the case that cannot be waived.

Throughout the Project, pro bono attorneys provide assistance with matters including, but not limited to, divorce, custody, domestic violence, guardianship, representing child victims of abuse/neglect, and consumer matters.

For more information about the Pro Bono Project, visit the Legal Aid Center of Southern Nevada website at www.LACSN.org

What types of assistance does the Pro Bono Project provide?

The Pro Bono Project matches private attorney volunteers with low-income individuals in need of assistance in the following areas:

- Adoption •Appeals •Bankruptcy •Child Abuse/Neglect (Representing Children)
- Civil/Consumer Fraud •Divorce/Custody •Domestic Violence •Gaming Work Card Denials
- Guardianship (Uncontested) •Estate/Trust •Immigration (Victims of Domestic Violence and Other Crimes) •Non-Profit organizations •Predatory Lending •Real Estate Fraud

The Project also has attorneys available to protect the rights of lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) individuals who are being victimized by domestic violence or sexual assault.

How do I apply for services?

Residents of Clark County, who meet Legal Aid Center of Southern Nevada's financial guidelines, are eligible for consideration for assistance through the Pro Bono Project.

If you are seeking assistance in any of the following areas, please attend one of the free legal information classes. At the end of the class, you can learn how to apply for pro bono legal representation.

- Divorce •Paternity/Custody •Guardianship •Bankruptcy

If you have a consumer problem, including but not limited to, problems with a payday loan, debt collection, car purchases, repair contracts, real estate scams, or other general civil issues, please call **Legal Aid Center of Southern Nevada's Consumer Hotline at (702) 386-1070, ext. 1717 (English), ext. 1730 (Spanish). A consumer advocate will return your call within 3-5 business days.**

If an applicant meets the initial requirements, the applicant will be scheduled for an interview with an intake advocate. The applicant will be required to provide proof of all household income and documents related to the case.

Once all necessary intake information has been provided, the case will be considered by a review committee. The committee will determine whether or not the Pro Bono Project will assist the applicant based on a variety of factors, including, but not limited to, merits of the case and availability of volunteers. If the committee decides to accept the case, the applicant will then be placed on a waiting

list while the Pro Bono Project begins the process of trying to match the case with an available volunteer attorney. This process typically takes between 30 and 90 days.

If the Pro Bono Project is unable to accept the case, it will advise the applicant of other available community resources.

Public Guardian

515 Shadow Lane
Las Vegas, Nevada 89106
Email: pubgdn@ClarkCountyNV.gov
Phone: (702) 455-4332

UNLV William S. Boyd School of Law

UNLV Law School offers free legal education classes.
Box 451012
4505 S. Maryland Parkway
Las Vegas, NV 89154-1012
For information call Legal Aid Center of Southern Nevada at 702-386-1070 ext. 155
www.law.UNLV.edu/free-legal-education