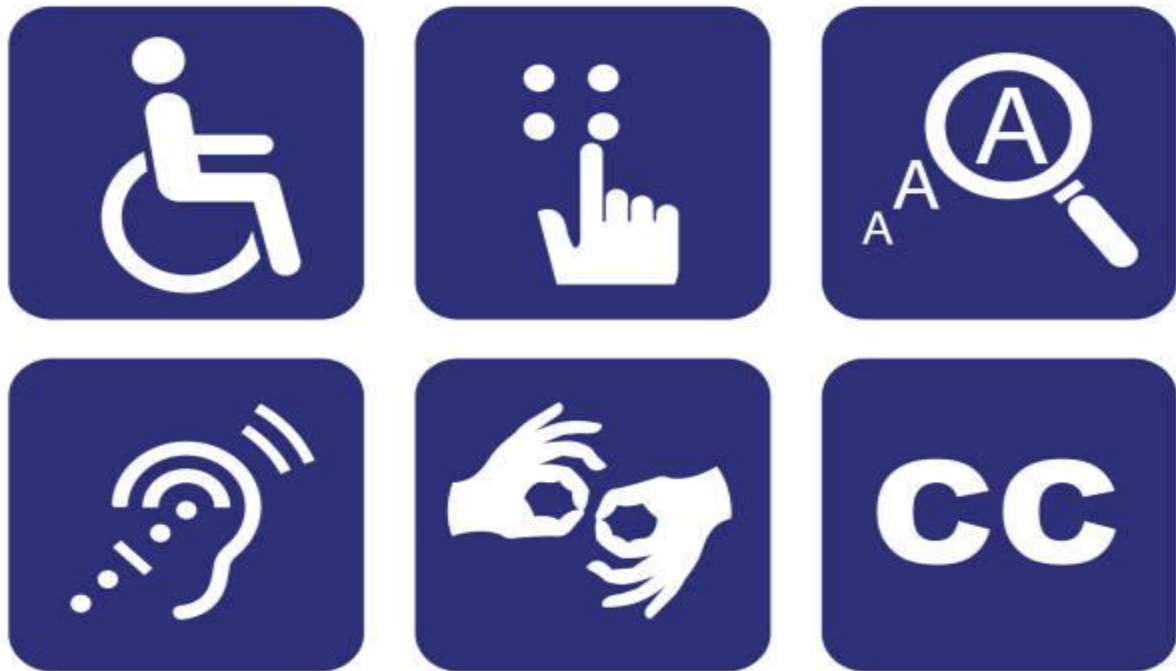


Susan Clark Law Group  
Presents

# The Essential Guide to Guardianship For Disabled Adults in NJ For NJ Special Needs Families



**This e-book is divided into several sections. Its purpose is to provide answers to parents and caretakers for a disabled individual's needs for as long as he or she requires care. It will also include types of guardianships, alternatives to guardianships, references to the forms required to apply for guardianship, and a glossary of terms used throughout the book for easy reference. The e-book is an abridgement of the books distributed by the Administrative Office of Courts in New Jersey: *Guardianship of the Person* and *Guardian of the Estate*.**

## Table of Contents

<b>What is a guardianship . . . . .</b>	<b>3</b>	<b>Guardianship of the Estate . . . . .</b>	<b>15</b>
<b>Does a person need a</b>		<b>Introduction to Guardianship</b>	
<b>    Guardianship? . . . . .</b>	<b>3</b>	<b>    of the Estate . . . . .</b>	<b>15</b>
<b>Applying for a guardianship .</b>	<b>3</b>	<b>Responsibilities of the</b>	
<b>Types of Guardianship . . . . .</b>	<b>4</b>	<b>Guardian of the Estate . . . . .</b>	<b>16</b>
<b>Guardianship of the</b>		<b>Letters of Guardianship . . . . .</b>	<b>16</b>
<b>    Person . . . . .</b>	<b>5</b>	<b>Short Certificates . . . . .</b>	<b>16</b>
<b>General Guardianship . . . . .</b>	<b>5</b>	<b>Surety Bonds . . . . .</b>	<b>16</b>
<b>Limited Guardianship . . . . .</b>	<b>5</b>	<b>Guardianship Limitations</b>	
<b>Letters of Guardianship . . . . .</b>	<b>5</b>	<b>    Restricted Assets . . . . .</b>	<b>16</b>
<b>Short Certificates . . . . .</b>	<b>6</b>	<b>Open Guardianship Account(s) . .</b>	<b>17</b>
<b>Guiding Principles . . . . .</b>	<b>6</b>	<b>Access and Manage Accounts . . . .</b>	<b>17</b>
<b>Responsibilities of the</b>		<b>Re-Titling Assets . . . . .</b>	<b>17</b>
<b>    Guardian of the Person . . .</b>	<b>6</b>	<b>Recording Transactions . . . . .</b>	<b>18</b>
<b>Substituted Judgement/</b>		<b>Recordkeeping . . . . .</b>	<b>18</b>
<b>    Best Interest . . . . .</b>	<b>8</b>	<b>Retention of Records Period . . . .</b>	<b>18</b>
<b>Medical Considerations . . . . .</b>	<b>9</b>	<b>Pay/Transfer on Death . . . . .</b>	<b>18</b>
<b>Informed Consent . . . . .</b>	<b>9</b>	<b>Notice to Service Providers . . . . .</b>	<b>19</b>
<b>Alternatives to</b>		<b>Guardian Reporting . . . . .</b>	<b>19</b>
<b>    Guardianships . . . . .</b>	<b>10</b>	<b>Guardianship Estate Inventory .</b>	<b>19</b>
<b>Glossary of Terms for</b>		<b>Guardianship Accounting . . . . .</b>	<b>19</b>
<b>    Guardianship of a Person .</b>	<b>12</b>	<b>Substituted Judgement/ Best</b>	
		<b>    Interest . . . . .</b>	<b>19</b>
		<b>Report of Guardian Cover Page .</b>	<b>20</b>
		<b>    Gifting . . . . .</b>	<b>20</b>
		<b>Payment for Services as the</b>	
		<b>    Guardian of the Estate . . . . .</b>	<b>21</b>
		<b>Glossary of Terms for</b>	
		<b>    Guardianship of the Estate . . .</b>	<b>23</b>
		<b>Forms and Information . . . . .</b>	<b>27</b>
		<b>Surrogate's Video . . . . .</b>	<b>30</b>

## **What is a *guardianship*?**

A *guardianship* is the court appointment of a person or agency to make personal decisions for an individual who is unable to make decisions independently. These decisions can be personal or financial.

## **Does the person need a guardianship?**

Before getting into the details of the guardianship and applying for it, one must determine *if there is a need for a guardianship*. Adults with disabilities often need assistance with their health and welfare issues. One way to achieve this is to have a guardian or guardians appointed by the court. It is important to note that a guardianship removes an individual's right of self-determination. Consequently, it should be used only as a last resort.

When children attain the legal age of eighteen (18), the parents' legal decision-making authority for them ends, *unless a court has ruled otherwise*. However, the parents can continue to be involved in the child's living decisions, such as:

1. Attending IEP meetings and other school meetings.
2. Being involved in medical decisions; and
3. Giving consent in a medical emergency as the next of kin.

Not every individual with a disability needs a guardian when he or she turns eighteen (18). It is an individual decision that depends on individual circumstances.

*For example: If a child lives at home with his or her parents, and has no serious medical issues that involve frequent hospitalizations, there is no immediate need to pursue a guardianship. However, if legal issues arise that require an advocate or attorney to ensure that the child is properly represented, the parents should consider a guardianship.*

**Applying for a guardianship.** An individual becomes a guardian by:

- 1) filing a verified complaint with the Surrogate Court in the county where the incapacitated person lives. The complaint must include particular information. The complaint must be supported by affidavits of physicians and a psychologist in some cases, based on recent examinations of the alleged incapacitated person.

- 2) Once the complaint is filed, the court will appoint an attorney for the alleged incapacitated person, and schedule a hearing.
- 3) If the court determines that the person is incapacitated, then a judgement will be entered appointing a guardian or co-guardians.
- 4) Before the guardian can act on behalf of the incapacitated person, he or she must appear before the County Surrogate to qualify as guardian.

Ways to pursue guardianship. Guardianships can pursue guardianships in three (3) different ways:

- 1) by representing oneself (*pro se*). The forms and instructions can be found at [www.judiciary.state.nj.us](http://www.judiciary.state.nj.us) or at <http://www.judiciary.state.nj.us/prose/10558.pdf>.
  - a) Click on “Represent myself in court.
  - b) Click on “How to file for guardianship of a developmentally disabled person.” This process eliminates the cost to hire an attorney.
- 2) through an attorney, at the guardian’s expense, to complete the entire process, and
- 3) with the assistance of the Bureau of Guardianship Services (BGS) at the New Jersey Department of Human Services. Families can request BGS to process a guardian petition. Note:
  - a) There are over 4000 requests currently pending.
  - b) This process is for guardianship of the person only.
  - c) BGS is only able to assist individuals who receive services funded by the Division of Developmental Disabilities. Individuals must apply to DDD to receive an eligibility determination.

### **What are the types of guardianships?**

The book is divided into several sections. Basically, these sections deal *guardianships of the person* and *guardianships of the estate*.

## **Guardianship of the Person**

The guardian *of a person* is a person (guardian) or persons appointed by the court to handle the personal affairs of another person who has been legally declared incapacitated (protected person). The guardian does not manage the financial affairs of the protected person, except that he or she may serve as representative payee for Social Security benefits. The guardian is meant to assure the provisions for the health, safety and welfare of the protected person, and to protect his or her rights in accordance with the judgement of the guardianship.

### **A guardianship of the person can be either General or Limited.**

General Guardianship. A general guardianship is appropriate for people who have been found incapable of making or expressing any decisions. This is sometime referred to as “plenary guardianship.

Limited Guardianship. A limited guardianship is appropriate for people who have been found capable of making and expressing some, but not all, decisions. The law identifies six (6) areas for limited guardianship:

1. Residential
2. Educational
3. Medical
4. Legal
5. Vocational
6. Financial, only as representative payee for Social Security.

**Letters of Guardianship.** Entry of the *Judgement* by the *Superior Court judge* establishes the guardianship. However, until the guardian qualifies before the *County Surrogate*, he or she cannot act as guardian. To qualify, the guardian must sign certain documents reflecting acceptance of the guardianship. Fees must be paid to the Surrogate for the issuance of *Letters of Guardianship*. The guardian is maintain these original letters in a secure location (safe or safety deposit box) and should not release them to any other person or facility. Qualification may occur immediately following the guardianship hearing; and must happen as soon thereafter as possible.

**Short Certificates.** When qualification occurs, the guardian should apply to the Surrogate for *short certificates*. Short certificates contain the basic information set fourth in the Letters of Guardianship, stating that by Judgement of a particular

sate, the guardian was appointed as guardian of the person of a protected person. A short certificate will also state that as of the date it was issued, the guardianship is in effect. The guardian may obtain additional up-to-date short certificates to provide doctors, care facilities, and other institutions as proof of the guardian's continuing authority.

**Guiding principles.** A guardian of the person, to maximize the quality of life of the protected person should consider the following guiding principles:

1. ascertain and consider those characteristics of the protected person which define his or her uniqueness and individuality including, but not limited to, likes, dislikes, hopes, aspirations and fears;
2. encourage the protected person to express preferences and participate in decision-making;
3. give appropriate deference to the expressed wishes of the protected person;
4. protect the incapacitated person from injury, exploitation, undue influence and abuse.
5. promote the protected person's right to privacy, dignity, respect and self-determination; and
6. make reasonable efforts to maximize opportunities and individual skills to enhance self-direction.

**Responsibilities of the guardian of the person.**

1. The guardian must examine and be familiar with the court order. If the guardianship is limited, the guardian must not exceed the limitations set in the court order.
2. The guardian must assert the rights and the best interests of the protected party.

3. The guardian must assist in the development of a plan for the protected person, which details how the supported services will be obtained. This may not be necessary in all cases.
4. The guardian must encourage the protected person to participate as much as possible in the decision-making process.
5. The guardian shall have the general responsibility for the care, maintenance and custody of the protected person. These may be limited by the terms of the court order, and if so, they may not be exceeded. If the best interests of the protected person irrevocably conflict with the beliefs of the guardian, the later should apply to the court for guidance or relief and transfer of those duties.
6. The guardian is empowered to select a place of residence for the protected person.
7. The guardian is to provide for the education, medical and psychological services, or for the social and vocational opportunities offered to the protected person. These include the guardian's authority to enter consents and/or approvals for these services.
8. The guardian has a duty to ensure that appropriate activities and socialization are provided for the protected person in areas that he or she enjoys. (e.g.: reading, music, movies, concerts, etc.). In New Jersey, the *Aging and Disability Resource Connection*, a division of the State of New Jersey Department of Human Services, assists guardians and caregivers in finding benefits and services. They can be viewed at [www.adrcnj.org](http://www.adrcnj.org).
9. The guardian must periodically report to the court regarding the guardianship. This is usually every twelve (12) months, unless ordered otherwise by the court. The *Report of Well-Being* must be filed with a *Report of Guardian Cover Page*. If there are multiple co-guardians, they may sign a single report, or may file separate reports if preferred. Detailed instructions for both report forms are posted on the Judiciary website [www.njcourts.gov](http://www.njcourts.gov) (search Guardian Reporting Forms).

10. Guardians should know that certain periodic reports submitted to the court will be reviewed through the New Jersey Judiciary *Guardianship Monitoring Program* (GMP). The guardian must cooperate with Probate Part judges, court staff, and volunteers who may request additional information from the guardian, or who may provide the guardian direction regarding the guardianship. For more information about GMP, go to [www.njcourts.gov](http://www.njcourts.gov) (search Guardianship Monitoring Program).
11. Payment for Service as Guardian of the Person. New Jersey Law does not provide compensation to a guardian of the person. If the guardian of the person has expenses for services that go beyond the scope of typical guardianship duties, he or she may apply to the court for compensation.
12. Death of the Protected Person. When the protected person dies, the guardian must promptly notify the *Surrogate Court* and forward a copy of the death certificate upon receipt. If the Judgement so states, then he or she is to notify anyone else within a specified period.

**Substituted Judgement/Best Interest.** The guardian's role is to listen to the protected person and ensure this his or her preferences are being met, if they do not cause harm. The guardian can do this in one of two ways: *using substituted judgement, or based on the best interest standard.*

***Substituted Judgement.*** When using substituted judgement, the guardian makes decisions that the protected person would make if he or she had the capacity to do so. To the extent that the protected person can understand the issue at hand, the guardian must discuss the decision that will be made with the protected person. When using substituted judgement, the guardian should discuss the issue with family members and friends about conversations they had with the protected person. In brief, the guardian must determine what the protected person's preferences were when they were still capable of making those decisions.

***Best Interest Standard.*** When dealing with a protected person who has been incapacitated since birth, the *substituted judgement* standard may be difficult to apply. In a situation such as this, where the protected person's judgement is unknown or may cause harm, the guardian would make the decision based on what he/she believes is in the protected person's *best interest.*



***Medical Considerations.*** The National Guardianship Association (NGA) provides an online outline that guardians should view when trying to make medical decisions on behalf of the protected person.

<http://guardianship.org/documents/standardspractice.pdf>.

**National Guardianship Standard (NGA). Informed Consent.**

- 1) Decisions the guardian makes on behalf of a protected person shall be based on the principle of Informed Consent. Informed consent is an individual's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently. Informed Consent is based on adequate information on the issue, voluntary action, and lack of coercion. The guardian stands in the place of the protected person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship. In evaluating each requested decision, the guardian shall do the following:
  - A. Have a clear understanding of the issue for which informed consent is being sought,
  - B. Having a clear understanding of the options, expected outcomes, risks and benefits of each alternative,
  - C. Determine the conditions that necessitate treatment or action,
  - D. Encourage and support the protected person in understanding the facts and directing a decision,
  - E. Maximize the participation of the person in making the decision,
  - F. Determine whether the person has previously stated preferences regarding a decision of this nature,
  - G. Determine why this decision needs to be made now rather than later,

- H. Determine what will happen if a decision is made to take no action,
- I. Determine what the least restrictive alternative is for the situation,
- J. Obtain a second medical or professional opinion, if necessary,
- K. Obtain information or input from family and other professionals, and
- L. Obtain written documentation of all reports relevant to each decision.

### **Alternatives to guardianship**

One of the alternatives to guardianship in the state of New Jersey is that an individual may appoint a *Power of Attorney* (POA) to make decisions on his or her behalf. To appoint a POA, the individual with the disability must be able to understand on a basic level that he or she is appointing someone to make decisions on his or her behalf. In addition:

- \* The person must be able to give consent;
- \* A POA can cover a person and/or the property;
- \* A POA can be revoked and or changed at any time based on changing needs; and
- \* A POA is less costly than a guardianship and it is best to work through an attorney to establish a power of attorney.

### **Disadvantages to Power of Attorney**

1. Some financial institutions require special forms, and may refuse the document after six months or a year;

2. More and more schools are requiring parents to obtain guardianships to make decisions at IEP meetings;
3. Guardianships will not be subject to interpretation; and
4. The agent in a POA may act differently than the principal had not intended, thereby introducing the possibility of exploitation, financial fraud or abuse.

## **Conservatorship**

In New Jersey, a *conservatorship* can be established whereby one person can be appointed by the probate court as a conservator to manage and protect the assets, and income, and other fiscal matters of another person (conservatee) The conservatorship must be voluntary and cannot be forced upon another. The conservator does not take care of life care and nonfiscal welfare of the conservatee.

## **Glossary of Terms for Guardianship of the Person**

<i>Advance Directive for Healthcare:</i>	A document setting forth an individual's wishes, specifically regarding medical and end-of-life decisions.
<i>Best Interest Standard:</i>	Making a decision based on what you believe to be in the best interest of another person.
<i>County Surrogate:</i>	An elected Constitutional Officer who serves as judge of the Surrogate's Court for uncontested probate and estate matters.
<i>General Guardianship:</i>	A complete type of guardianship in which the guardian is to exercise all rights and powers of the incapacitated person in terms of the area of responsibility he or she is granted.
<i>Guardian:</i>	An individual appointed by the court with authority over the person and/or estate of a person who has been legally declared incapacitated.
<i>Guardian of the Estate:</i>	An individual appointed by the court to handle the financial affairs of another person who has been legally declared incapacitated.
<i>Guardian of The Person:</i>	An individual appointed by the court to handle the personal affairs of another person who has been legally declared incapacitated.
<i>Guardianship Program Monitoring Program (GMP):</i>	The New Jersey Judiciary Guardianship Monitoring is a statewide court program to monitor and support guardians in their handling of the affairs of incapacitated individuals.
<i>Healthcare Proxy:</i>	An individual designated by an advance directive to make medical and end-of-life decisions for the principal if the principal becomes unable to do so.

<i>Incapacity:</i>	Inability to govern oneself and/or manage one's affairs.
<i>Incapacitated Person:</i>	An individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs.
<i>Informed Consent:</i>	An individual's agreement to a particular course of action based on a full disclosure of the facts needed to make the decision intelligently.
<i>Interested Parties:</i>	A person or agency that has an involvement with the incapacitated person who is the subject of the guardianship.
<i>Judgement:</i>	The official decision of the court in a case.
<i>Least Restrictive Alternative:</i>	The most minimally restrictive form of intervention appropriate to address a situation, enabling the incapacitated person to maintain as much independence as possible without putting him or her in danger.
<i>Letters of Guardianship:</i>	Documents issued by the County Surrogate upon an individual's qualification as guardian, after the entry of Judgement by the Superior Court. It is a proof of a Guardian's authority.
<i>Limited Guardianship:</i>	A less intrusive, more individualized, type of guardianship in which the guardian is appointed with some, but, not all areas. A limited guardianship is established based upon a court's finding that the person alleged to be incapacitated lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself.
<i>Protected Person:</i>	Another term for an incapacitated person – an individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs.
<i>Qualification:</i>	A process conducted before the County Surrogate or Surrogate's staff, following the entry of a Judgement.

<i>Report of Guardian Cover Page:</i>	A general information form required to be filed along with any other guardianship reporting form(s). It must be signed by all co-guardians of the person. The report is posted on the Judiciary website <a href="http://www.njcourts.gov">www.njcourts.gov</a> (search for Guardian Cover page).
<i>Report of Well-Being:</i>	A form developed and approved for use by a guardian of the person required to report as to the well-being of the protected person. The Report of Well-Being is available on the Judiciary website <a href="http://www.njcourts.gov">www.njcourts.gov</a> (search for Report of Well-Being).
<i>Service:</i>	Service is the delivery of papers in a legally appropriate way. For more information, see New Jersey Rules of Court (Rules 1:5) at <a href="http://www.njcountys.gov">www.njcountys.gov</a> (search for Rules of Court).
<i>Short Certificates:</i>	Short forms of the Letters of Guardianships, stating that by Judgement of a particular date, the guardian was appointed with authority of the person under the named protected person. Additional short certificates may be purchased from the Surrogate as long as the guardianship remains in effect. They should be provided to doctors, care facilities, and other institutions that require proof of a guardian's authority.
<i>Substituted Judgement Standard:</i>	Making a decision based upon what you believe that the protected person would do if he or she had the capacity to make the decision.
<i>Superior Court Judge:</i>	For purposes of guardianships, the judge of the Superior Court, Probate Part, who decides if the alleged incapacitated person is, in fact, incapacitated and in need of a guardian. The Superior Court judge makes the substantive decisions about the guardianship, including the determination of capacity and the choice of guardian. The Superior Court judge conducts any hearings and signs the Judgement.
<i>Surrogate's Court:</i>	A county office headed by the County Surrogate that may be in the same location or different location as the Superior Court.

## Guardianship of the Estate

A *guardian of the estate* is a person (guardian) or persons appointed by the court to handle the legal and financial decisions for another person who has been legally declared as incapacitated (protected person).



### **Introduction**

When is guardian of the estate necessary? The answer depends on whether the protected person is able to manage his or her financial and property issues. The duties of the guardian of the estate are significantly different than those of the guardian of the person. If a protected person has an estate (income from earnings or pension, real property, stocks, bonds, etc.), then it is likely that a guardian of the estate is appointed to control and manage these assets and the estate. If a petitioner is unsure whether to file for a guardian of the estate, he or she should consult an attorney. Referral services are available at the Judiciary website [www.njcourts.gov](http://www.njcourts.gov) (search lawyer referral services). One can also contact the *County Surrogate* regarding this issue.

A guardianship of the estate is not necessary simply to act as representative payee for Social Security income. This can be done by a guardian of the person.

## **Responsibilities of the guardian of the estate.**

**1. Gather and protect assets estate.** The guardian of the estate must gather and protect the assets of the estate, and be familiar with the court order.

**2. Letters of Guardianship.** Entry of the Judgement by the Superior Court judge establishes the guardianship. However, until the guardian qualifies before the County Surrogate, he or she cannot act as guardian. To qualify, the guardian must sign certain documents reflecting acceptance of the guardianship. Fees must be paid to the Surrogate for the issuance of Letters of Guardianship. The guardian is to maintain these original letters in a secure location (safe or safety deposit box) and should not release them to any other person or facility. Qualification may occur immediately following the guardianship hearing; and must happen as soon thereafter as possible.

**3. Short Certificates.** When qualification occurs, the guardian should apply to the Surrogate for short certificates. Short certificates contain the basic information set forth in the Letters of Guardianship, stating that by Judgement of a particular state, the guardian was appointed as guardian of the person of a protected person. A short certificate will also state that as of the date it was issued, the guardianship is in effect. The guardian may obtain additional up-to-date short certificates to provide banks and other financial institutions as proof of the guardian's continuing authority.

**4. Surety Bonds.** The court will typically order that the guardian of the estate to post a surety bond to cover all assets that belong to the protected person, such as an insurance policy. This is to safeguard the assets of the protected person. *This must be done before the judgement is granted.* The cost of the surety bond can be paid (or reimbursed) from the guardianship estate. The County Surrogate will prepare the paperwork required by the bond company.

**5. Guardian Limitations / Restricted Assets.** If the court restricts an asset, the guardian may not use, sell, or transfer that restricted asset without the court's approval. The court can restrict any asset of the protected person's estate, but typically restricts real property. When the court restricts an asset, the restriction is outlined in the Judgement and the Letters of Guardianship so that all parties know what the guardian of the estate can and cannot do regarding the estate. If a court



restricts an asset, its value need not be covered by the surety bond. However, if the restriction is lifted, the court may order that a surety bond be posted for the asset to be unrestricted.

**6. Open Guardianship Account(s).** Upon appointment, the guardian of the estate, the guardian must open a checking account for the guardianship estate. Since the guardian must not use his or her Social Security number in opening the account, he or she should obtain a tax identification number by contacting the Internal Revenue Service (IRS) by visiting [www.irs.gov](http://www.irs.gov).

**7. Access and manage protected person's account.** The guardian must notify the guardianship bank or brokerage firm that he or she of his or her guardianship appointment. He or she must provide the institutions with an up-to-date short certificate and a copy of the judgement.

*Caveats: The guardian should not use his or Social Security number in opening guardianship accounts; the guardian must not commingle guardianship funds with his or her own money; and DO retitle assets.*

**8. Retitling Assets.** Upon the presentation of the up-to-date short certificate of guardianship, the account assets will be retitled in the name of the guardianship.

*The purpose of retitling assets is to notify the bank or, brokerages, Department of Motor Vehicles, and other institutions that the guardian is an authorized person who should be directing how the asset is held, spent, or managed.*

**NOTE 1: If the estate is very large, the Guardian should consult with an accountant or financial advisor as to the management of the estate.**

**NOTE 2: Assets titled as Payable-on-Death or Transfer-on-Death to an individual are considered part of the protected person's estate plan, which the guardian has an obligation to maintain.**

**9. Recording Transactions.** The guardian must ensure that no other individual have access to any guardianship bank accounts under his or her management.

- \* While there is no law that prohibits the guardian from using a debit or cash card to transact business on behalf of the protected person, it is best to avoid these methods whenever possible.

- \* Debit cards can be easily accessed by another individual; and it is difficult to prove that a cash transaction was used for the benefit of the protected person.

- \* If it is necessary to use cash for a purchase, the guardian must keep all receipts to prove that the purchase was for the benefit of the protected person.

**10. Notice to Service Providers.** The guardian should contact the protected person's service providers (utilities, TV, telephone, internet, etc.) to request future statements be sent to your address for payment. A short certificate may be required. Also, he or she should process a "change of address" request from the United States Postal Service to ensure that the guardian receives all correspondence of the protected person.

**11. Recordkeeping.** The guardian is required to keep records of the income and expenses managed. The types of records to be maintained depend on:

- \*The guardian should maintain the original papers for all important documents, such as: life insurance policies, insurance cards, car and health insurance, deeds, titles, birth and death certificates.

- \* When the protected person resides with the guardian, receipts for the protected person's share of the household expenses are not required.

**12. Retention Period.** The guardian should maintain records for the protected person at least for as long as the guardian remains so appointed. However, other laws may require the guardian to keep records for longer periods of time.

**13. Pay/Transfer on Death.** Assets titled as Payable-on Death or Transfer-on-Death to an individual, as set forth in a Last Will and Testament or a trust, are considered as part of the protected person's estate plan, and must be maintained by the guardian.

**14. Notice to Service Providers.** The guardian should contact the protected person's service providers (utilities, TV, telephone, internet, etc.) to request future statements be sent to your address for payment. A short certificate may be required. Also, he or she should process a "change of address" request from the United States Postal Service to ensure that the guardian receives all correspondence of the protected person.

**15. Guardian Reporting.** Generally, the guardian of the estate must report periodically to the court regarding the guardianship. Most guardians of the estate are required to report every twelve (12) months. However, the Superior Court judge who established the guardianship may order a different reporting frequency.

**16. Guardianship Estate Inventory.** Unless waived by the court, a guardian of the estate must file an *inventory* of the guardianship assets, typically within ninety (90) days of the date of the Judgement. This requirement, or waiver, will be stated in the Judgement. The value listed on the inventory for a particular asset must be the value as of the guardian's date of appointment. All assets of the estate should be listed on the inventory. The list should include, but is not limited to the type of assets shown below: bank accounts, brokerage accounts, annuities, cash surrender value of insurance policies, real property, automobiles, jewelry/artwork/antiques, and household items, and cash.

**17. Guardianship Accounting.** A guardian's accounting contains a summary of financial transactions that have taken place in the previous year of his or her administration as guardian of the estate. It contains information about the beginning value of assets held by the estate as of the date of the guardian's appointment as well as the ending balance of the assets as of the last date of the accounting period.

**18. Substituted Judgement/Best Interest.** The Guardian of the estate must ensure that the preferences of the protected person are being met if it does no harm. The guardian's decisions for the protected person are based in one of two ways: (a) using substituted judgement or (b) basing it on the best interest standard.

*Substituted Judgement.* When using substituted judgement, the guardian makes decisions that the protected person would make if he

or she had the capacity to do so. To the extent that the protected person and understand the issue at hand, the guardian must discuss the decision that will be made with the protected person. When using substituted judgement, the guardian should discuss the issue family members and friends about conversations they had with the protected person. In brief, the guardian must determine what the protected person's preferences were when they were still capable of making those decisions. For example, if the guardian believes it would be appropriate to sell an asset belonging to the estate, he or she should discuss this with the protected person and to other family members if they have had conversations with the protected person. Perhaps they may have wanted that particular asset to be set aside as a gift for someone else.

***Best Interest Standard.*** The guardian would be to make decisions Based on his or her belief to be in the protected person's best interest, unless those decisions may cause harm or injury.

***In either of the two methods, if the guardian makes a decision that is in contrast to the stated or demonstrated preferences of the protected person, he or she should be prepared to defend that decision to the court.***

**19. Report of Guardian Cover Page.** Whichever accounting for is submitted, the guardian must also file a *Report of Guardian Cover Page*. If there are multiple co-guardians of the estate, all co-guardians may sign a single report.

## **20. Gifting.**

**20.1 Accepting Gifts.** It is typically viewed as a conflict of interest for the guardian of the estate to accept any gift from the protected person without first seeking court approval. The general rule is that the guardian of the estate cannot and should not accept gifts from the protected person.

**20.2 Giving Gifts.** In New Jersey, the guardian of the estate of an incapacitated person is not automatically authorized to give gifts from the guardianship estate. If the gifts would serve a valid purpose, such as minimizing tax exposure, then the guardian

should request that the Judgement include specific provisions regarding gifting.

**20.3 General Gifting Considerations.** If the guardian of the estate is seeking authority to provide a gift from the estate, he or she should be prepared to supply the court with all the following information:

*\*The protected person's estate plan.*

*\*Whether or not there is a pattern of prior gifting.*

*\*The potential tax savings if the gifts are authorized.*

*\*The size of the estate.*

*\*The protected person's income and expenses.*

*\*The physical and mental condition and life expectancy of the protected person.*

*\*The likelihood that the protected person's disability may cease or improve.*

*\*The likelihood that the protected person would make this gift if  
\*He or she were able to consent.*

*\*The ability of the protected person to consent to gifts.*

## **21. Payment for Service as the Guardian of the Estate.**

**21.1 Commissions and Reimbursement.** The guardian of the estate is entitled to payment for services. New Jersey statutes set forth specific *commissions* that may be taken by a guardian of the estate, based upon the value and income of the estate. The guardian is also entitled to *reimbursement* from the protected person's estate for any money he or she has paid out-of-pocket for the estate's benefit.

**21.2 Attorney's Fees.** The guardian may hire an attorney and have the

attorney's fees paid for by the estate – if the court determines that the fees are reasonable and necessary.

**21.3 Death of the Protected Person.** When the protected person dies, the guardian must promptly notify the *Surrogate Court* and forward a copy of the death certificate upon receipt. If the Judgement so states, then he or she is to notify any other interested party within a specified period.

Detailed instructions for the Reporting Forms are provided along with each online form. Any questions about filing the forms should be directed to the appropriate Surrogate Court. A directory of the New Jersey County Surrogates can be found on the Judiciary website.

Guardians should know that certain periodic reports submitted to the court will be reviewed through the New Jersey Judiciary *Guardianship Monitoring Program* (GMP). The guardian must cooperate with Probate Part judges, court staff, and volunteers who may request additional information from the guardian, or who may provide the guardian direction regarding the guardianship.

## Glossary of Terms for Guardianship of the Estate

<i>Best Interest Standard</i>	Making a decision on what the guardian believe to be in the best interest of the protected person.
<i>Coomingle</i>	A guardian combines items of the protected person with other Funds, such as those of the guardian.
<i>Commissions</i>	Compensation, set by statute, to which a guardian of the estate is entitled.
<i>Comprehensive Accounting</i>	One of two forms approved for guardians of the estate who are required to file periodic reports to the court. The Comprehensive Accounting form is lengthier and more detailed than the EZ Accounting form. It is appropriate when a guardian is managing a large and/or complex estate. It can be found at <a href="http://www.njcourts.gov">www.njcourts.gov</a> (search for Comprehensive Accounting form).
<i>County Surrogate</i>	An elected Constitutional Officer who serves as judge of the Surrogate's Court for uncontested probate and estate matters. A Surrogate also serves as Deputy Clerk to the Superior Court for the Probate Part, as well as for adoptions in the Family Part.
<i>EZ Accounting</i>	One of two forms approved for guardians of the estate who are required to file periodic reports to the court. The EZ Accounting form is shorter and much less detailed than the Comprehensive Accounting form. It is appropriate when a guardian is managing a small and simple estate. This form can be found at <a href="http://www.njcourts.gov">www.njcourts.gov</a> (search for EZ Accounting form).
<i>General Guardianship</i>	A complete type of guardianship in which the guardian is able to exercise all rights and powers of the incapacitated person in terms of the area of responsibility he or she is granted.
<i>Guardian</i>	An individual appointed by the court with authority over the person and/or estate of a person who has been legally declared incapacitated.

<i>Guardian of the Estate</i>	An individual appointed by the court to handle the financial affairs of another person who has been legally declared incapacitated.
<i>Guardian of the Person</i>	An individual appointed by the court to handle the personal affairs of another person who has been legally declared incapacitated.
<i>Guardianship Monitoring Program (GMP)</i>	The New Jersey Judiciary Guardianship Monitoring Program is a statewide court program to monitor and support guardians in their handling of the affairs of incapacitated individuals.
<i>Incapacity</i>	Inability to govern oneself and/or manage one's affairs. Incapacity may be general (as to all areas) or limited (as to specific areas only).
<i>Incapacitated Person</i>	An individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs (also known as a protected person).
<i>Interested Parties</i>	A person or agency that has an involvement with the protected person. Interested parties (or parties in interest) are typically the same individuals entitled to notice of the initial application for guardianship – i.e., the protected person's spouse, parent, adult child, etc.
<i>Inventory</i>	A written summary of the assets, income, and liabilities of an individual. In the context of guardianship of the estate, an inventory is a document typically required to be filed with the court within ninety (90) days of a guardian's appointment. The inventory must be filed on the approved form which is posted at <a href="http://www.njcourts.gov">www.njcourts.gov</a> (search for Guardianship Inventory form).
<i>Judgement</i>	The official decision of the court in a case. For purposes of this guide, Judgement refers to the Judgement of Incapacity and Guardian Appointment – also known as Judgement of Incapacity.



<i>Least Restrictive Alternative</i>	The most minimally restrictive form of intervention appropriate to address a situation, enabling the protected party to maintain as much independence as possible without putting him or her in danger.
<i>Letters of Guardianship</i>	Documents issued by the County Surrogate upon an individual's qualification as guardian, after the entry of a Judgement by the Superior Court. It is a proof of a guardian's authority.
<i>Limited Guardianship</i>	A less intrusive, more individualized, type of guardianship in which a guardian is appointed with authority as to some – but not all – areas. It is based on a court's finding that the person alleged to be incapacitated lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself.
<i>Protected Person</i>	Another term for incapacitated person, that is person legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs.
<i>Qualification</i>	A process conducted before the County Surrogate, or Surrogate's staff, following the entry of Judgement.
<i>Report of Guardian Cover Page</i>	A general information form required to be filed along with any other guardianship reporting form(s). It may be signed by all co-guardians of the person or of the estate. The Report of Guardian Cover page is posted at: <a href="http://www.njcourts.gov">www.njcourts.gov</a> (search for Report of Guardian Cover page).
<i>Restricted Assets</i>	Assets over which a guardian of the estate does not exercise full control. The restrictions can be found in the Judgement, and sometimes in the Letters of Guardianship.
<i>Service</i>	Delivery of papers in a legally appropriate way. For more information, see NJ Rules of Court 1:5 <a href="http://www.njcourts.gov">www.njcourts.gov</a> (search for rules).

<i>Short Certificates</i>	Short forms of the Letters of Guardianship, stating that by Judgement of a particular date, the guardianship was with authority of the person and/or estate of the named protected person.
<i>Substituted Judgement Standard</i>	The guardian makes a decision based upon what he or she believe that the protected person would do if he or she had the capacity to make the decision.
<i>Superior Court Judge</i>	For purposes of guardianships, the judge of the Superior Court, Probate Part, who decides if the alleged incapacitated person is in fact incapacitated and in need of a guardian. The Superior Court judge makes the substantive decisions about the guardianship, conducts any hearings, and signs the Judgement.
<i>Surety Bond</i>	The bond functions as an insurance policy so that if the guardian of the estate misappropriates or misuses the money, or makes some other mistake, the incapacitated person's estate will be protected.
<i>Surrogate Court</i>	A county office headed by the County Surrogate. Probate Part actions are filed with the Surrogate's office, including actions to appoint a guardian. It is also where the guardian goes to qualify after the entry of the Judgement.

## **New Jersey Guardianship Forms and Information**

### **How to apply for guardianship**

New Jersey Superior court Guide to applying for Guardianship

[https://www.njcourts.gov/forms/12032\\_motion\\_guardianship.pdf](https://www.njcourts.gov/forms/12032_motion_guardianship.pdf)

### **Duties of Guardianship in New Jersey**

Important List from the New Jersey Superior Court on Duties of Guardians

[https://www.njcourts.gov/forms/11923\\_guard\\_person\\_summary\\_resp.pdf](https://www.njcourts.gov/forms/11923_guard_person_summary_resp.pdf)

### **Guardian Reporting Forms**

Comprehensive Guide to all yearly reporting to the Surrogate's Office

[https://www.njcourts.gov/courts/assets/guardianship/guardianship\\_forms\\_web.pdf](https://www.njcourts.gov/courts/assets/guardianship/guardianship_forms_web.pdf)

### **Guardian Cover Page**

All guardians required to file periodic reports must complete the Report of Guardian Cover Page. This is a one-page document to which the All guardians required to file periodic reports must complete the Report appropriate report(s) will be attached.

[https://www.njcourts/forms/11797\\_grdnshp\\_rpt\\_grdn\\_cover\\_pg.pdf](https://www.njcourts/forms/11797_grdnshp_rpt_grdn_cover_pg.pdf)

## **Report of Well-Being**

If you are a guardian of the person, you may be required to file the Report of Well-Being. This document includes ten (10) questions and space to provide additional information. For any question that cannot be answered fully in the space provided, you should attach additional sheets, writing or typing on only one side of the page.

[https://www.njcourts.gov/forms/11798\\_grdnshp\\_rpt\\_well\\_being.pdf](https://www.njcourts.gov/forms/11798_grdnshp_rpt_well_being.pdf)

## **Certificate of Professional for Yearly Reporting**

If you are a guardian of the person, you may be required to file a Report of Well-Being which includes a Certification of Examining Professional. The Certification of Examining Professional is a form certification which should be provided to a medical professional (i.e., medical doctor (M.D.), doctor of osteopathic medicine (D.O.), etc., who has performed a recent medical evaluation of the incapacitated person.

[https://njcourts.gov/forms/12042\\_cert\\_exam\\_prof.pdf](https://njcourts.gov/forms/12042_cert_exam_prof.pdf)

## **Guardianship Inventory Form**

A Judgement of Incapacity may direct the filing, usually within ninety (90) days of an inventory of the estate of the incapacitated person. Always check the Judgement to confirm the deadline for filing, as well as who must be served with a copy of the inventory.

[https://www.njcourts.gov/forms/11799\\_grdnshp\\_inventory.pdf](https://www.njcourts.gov/forms/11799_grdnshp_inventory.pdf)

## **Comprehensive Accounting Form**

Guardians of the estate may be required to report using Judiciary forms as to the financial affairs of the incapacitated person. There are two different periodic reporting forms: the Periodic EZ Accounting form (“EZ form”), and the Periodic Comprehensive Accounting form (“Comprehensive form”). The Judgement of Incapacity should specify which form you are required to file, as well as the deadline for filing. Note that instead of filing a Judiciary form, it is possible that a Judgement may direct periodic filing of a copy of a Social Security Representative Payee Report for the most recent reporting period, or a formal accounting.

[https://www.njcourts.gov/forms/11801\\_grdnshp\\_cpmprehensive\\_accting.pdf](https://www.njcourts.gov/forms/11801_grdnshp_cpmprehensive_accting.pdf)

### **EZ Accounting Form**

Guardians of the estate may be required to report using Judiciary forms as to the financial affairs of the incapacitated person. There are two different periodic reporting forms: the Periodic EZ Accounting form (“EZ form”), and the Periodic Comprehensive Accounting form (“Comprehensive form”). The Judgement of Incapacity should specify which form you are required to file, as well as the deadline for filing. Note that instead of filing a Judiciary form, it is possible that a Judgement may direct periodic filing of a copy of a Social Security Representative Payee Report for the most recent reporting period, or a formal accounting.

[https://www.njcourts.gov/forms/11800\\_grdnshp\\_ez\\_accting.pdf](https://www.njcourts.gov/forms/11800_grdnshp_ez_accting.pdf)

# **New Jersey Surrogate's Requirement to Watch Video before Becoming a Guardian**

Welcome to Our Clients!

New Jersey Surrogate requires all guardianships must watch this video and certify to the Surrogate that they have watched the video before becoming a guardian.

*It is approximately 20 minutes.*

<https://www.youtube.com/watch?v=S9AowlLqHAY>

Once you watch the video, you can complete the Certification for guardianship that we sent you.

Thank you!

*Susan Clark Law Group  
35 Court Street, 2C  
Freehold, NJ 07728  
Tel: 732-637-5248  
www.susanclarklawgroup.com*





















