

Adult Guardianship & Conservatorship in Georgia

A Practical Guide to filing for Guardianship or Conservatorship of an Adult in Georgia

Disclaimer:

This guide is for educational purposes only and does not substitute consulting with or hiring your own attorney to represent you in any legal proceeding or process. Purchasing or using this guide does not create an attorney client relationship with the author, or the firm.

Do I need to hire an Attorney?

When I am asked “Do I need an attorney?” the short answer is no. There is no legal requirement that you are represented by an attorney in the Probate Courts of Georgia. The real answer is “It depends.” It depends on all sorts of factors, including your knowledge, background and experiences, the specifics of your particular situation, the situation of the proposed ward, and what you are trying to accomplish. Seeking a guardianship is a court proceeding. In fact, it is arguably the second greatest exercise of power that a court has over an individual, the first being putting someone in jail. In a guardianship proceeding, the court is determining that an individual lacks capacity to enter into legally binding agreements, they may not be able to marry, their freedom of self determination may be removed from them, someone else is being granted the legal authority to make significant decisions about the ward. This is not a power that is wielded lightly by the court, nor should any who consider seeking guardianship view it lightly either.

Guardianship is not simply filing paperwork and dealing with annual reports for the court; your responsibilities are extremely important. You become responsible for the well-being of a vulnerable individual, someone who needs caring, faithful, and honest assistance. They need someone who will look out for their best interest, even if that means putting the ward’s best interest ahead of your own. All the formalities of a court process are involved; not understanding this or not willing to accept this can compound problems that could have easily been overcome. You must file a sworn petition. Formal legal notice must be served. Witnesses must make sworn statements. A hearing will be held. If a conservator is appointed, they must post a fiduciary bond. The guardian and conservator will have ongoing duties and responsibilities to the ward and the court.

By and large the probate courts, the judges, the clerks, the doctors, and attorneys are all working to assist those in our society who are vulnerable. The system is not perfect, there are checks and balances, and these may seem burdensome or inappropriate to you. You may feel offended by some questions that are asked. It may feel like it is an intrusion that an attorney who you do not know, comes into your home to meet with your mother and wants to speak with her privately. People come to the probate court at stressful times in their lives. It may be the only time they have ever had contact directly with our court system.

The majority of the people working in the probate court are sensitive, caring individuals and will try to help, but you must understand certain realities about the court. The clerks are not

allowed, by law, and the risk of losing their jobs, to provide anyone with legal advice/counsel. So, even if they know the answer, and want to help you, they cannot. Likewise a judge cannot give you specific legal advice about your particular situation, especially if they may be presiding over the court which hears your case. This is what lawyers are for.

When an attorney agrees to represent you they look at your particular set of circumstances, help formulate a plan to best address your issues and concerns, and then help put that plan into action. Attorneys have specialized knowledge and skills to effectively assist you, and to save you from making simple, yet costly errors. They are on your team and will advocate on your behalf. They will help you prepare for the hearing, they will communicate with the court and the other professionals involved. Your attorney will help you through the process. Your attorney will make sure that the court has the information it needs to make a proper decision in your case. You must be responsive to your attorney's requests, and work with your attorney, and you may have to accept that the legal system does things a certain way and you must conform if you want to be a guardian or conservator.

Back to the original question, "do you need a lawyer?" Only you can answer that question, you will have to determine if the benefit from having an attorney will justify the cost. Perhaps this guide will assist you in making that decision. This guide will show you how to do the mechanics of seeking a guardianship. This guide will identify some of the problem areas. As you work through this guide, if you are realizing that your particular situation has more problem areas than you know what to do with, or care to deal with on your own, then it is an easier decision to hire an attorney. You will then feel more confident that you are getting value for the expense, because you will know first hand the complexity of your case. You then hopefully will view your attorney as a valued legal advisor and advocate, and not just someone who filled in a form.

On the other hand, you may work through this book, the answers are clear, your case is pretty straightforward, you feel confident that you understand the issues and you are comfortable that you will be able go through the court process. Then you have saved yourself some financial resources, yet you are still able to accomplish your goals without hiring an attorney.