

COLLAS DAY | PRIVATE CLIENT

Property Services

Wealth Services

Inheritance

Wills

Probate

Estate Administration

Guardianship

What is a Guardian?

A Guardian is a representative of a person who is considered to be incapable of handling his or her own affairs. They act on behalf of the incapacitated person to do those things which that person cannot do in their own right, for example, entering into legally binding obligations, selling property and bringing or defending proceedings in Court.

The Guardian is usually a close relative of the incapable person, and must be resident in Guernsey. Where they are not resident in the Island a joint Guardian who is local must be appointed, usually an advocate.

When is a Guardian required?

A Guardian is required when a person is considered to be legally incapable. Persons without legal capacity include those under the age of eighteen and those who are of unsound mind, for example, due to the effects of old age or mental illness.

How is a Guardian appointed?

A Guardian can only be appointed by the Royal Court and the proposed Guardian must therefore make an application to the Court to be appointed. This application must be supported by the "Family Council" and a medical practitioner must certify that the patient is indeed unable to manage their own affairs.

(i) Family Council

The Family Council is made up of the closest relatives of the person for whom the Guardian is to be appointed, excluding the Guardian themselves, or if there are no such relatives then the closest friends or neighbours of that person. The Family Council usually has at least three members.

(ii) Medical Evidence

The medical practitioner must know the patient and state that they are unable to manage their own affairs. They must also state that the infirmity is of indefinite duration and is not likely to be reversed. If this is the case the Court is likely to appoint a Guardian.

What are the duties of a Guardian?

Once appointed the Guardian is answerable to the Court for all of their actions. They must act in the best interest of the person under their guardianship at all times and must be able to give an account to the Court of all the monies which they have received and expended.

What are the powers of a Guardian?

Once appointed the Guardian has the capacity to administer the affairs of the person under their guardianship, including their bank accounts and legal arrangements.

What is the next step?

If you believe that a Guardian should be appointed for a loved one, you should first obtain confirmation from that person's medical practitioner that they are incapable of managing their own affairs. Then, along with other close family members you should consider who will apply to become Guardian. Once this has been agreed you should make an appointment with an advocate to discuss the progression of the application.

Note

This leaflet is only a guide and introduction to the provisions of Guernsey Law; it is not exhaustive or definitive and specific advice on the matters to which it refers should always be obtained.

To make an appointment with an advocate, please call 723191.