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Adult Guardianship – What to Expect When Working with HKH Elder Law

1. **First Contact-** You and our staff will make an appointment with one of our attorneys for a consultation. The first 30 minutes will be free of charge. Once you have made an appointment, we will send you a short form to complete. The form will help us during that first meeting. It will include basic information needed for any guardianship process.
2. **Determine the need for a guardianship-** During our first meeting we will talk about the circumstances that you believe require guardianship. Guardianship should be a last resort and used only when necessary. That said, we fully understand there are times when guardianship is unavoidable.
3. **Draft, Execute & File Guardianship Pleadings-** Once we have determined a guardianship is necessary and we have gathered sufficient information we will draft pleadings required. We will then have you sign them (either in the office or by sending them to you). When all are properly executed, we will file them with the court.
4. **Set Court Hearing and Pre-hearing process-** In its processing of the Guardianship pleadings, the clerk's office will arrange for a court appointed attorney for the "ward" and will contact us with hearing dates. All guardianships require that the ward be served with notice by a deputy sheriff, be visited by three examining committee members, and have a hearing before the court.
5. **Court Hearing-** Each examining committee member will file a report of their visit and their capacity evaluation. There are a number of issues that can be addressed at this stage of the matter.
6. **Guardianship Established-** So long as the court determines incapacity and appoints a guardian, the guardianship is established. And, as long as you, or our client, is appointed guardian, we will have further work to do. Within 60 days of appointment, the guardian must file an inventory of the ward's assets (for guardian of property) and a guardianship plan (for guardian of person).
7. **Ongoing Guardianship-** Once a guardianship has been established and unless the court waives, the guardian must report to the court annually on person and property. There are certain activities the guardian may need to take that require court approval. Thus, we consider guardianship as an ongoing relationship that continues as long as the Ward is living or guardianship is in the courts. We have seen guardianships, with the need for reporting to the courts, continue for many many years.
8. **Closing the Guardianship-** The closing of a guardianship occurs under two circumstances. Either the Ward's rights are restored and the court dismisses the guardianship or the ward passes away.

Either way, the guardian is required to file final reports in order to be released of his or her duty. Our goals are always to protect the ward while guiding the guardian through necessary steps.

How Long does it take? Generally, it will take about 2 months to establish an uncontested non-emergency guardianship. During that time we will have drafted the pleadings with information you provide us and filed the petition. From that point, the court will set a hearing date and appoint an attorney and three examining committee members for the alleged incapacitated. The hearing date is normally scheduled within 5-6 weeks of the filing. As long as there are no objections or issues, it is likely that the court will make a decision on that date but it may take a while to see a signed order. However, if there are objections or opposing guardianship petitions the timeline could be longer. How much longer depends completely on the circumstances.

Once a guardianship is established it continues in the court system until the ward's rights are restored or the ward passes away. The guardian is required to file initial reports and annual reports as long as it is in place. Additionally, the guardian may need to petition the court to carry out certain activities such as moving the ward out of the county, paying for certain things or gifting away property, etc. By law, the guardian is required to have ongoing attorney representation for most guardianship cases.

Our Guardianship Fees: Guardianship is the most difficult to quote a flat fee because of unexpected activities. We do our best to plan with our clients and avoid guardianship because it is the process of removing a person's rights and delegating them to another qualified person. Unfortunately, there are times when guardianship is unavoidable, like when a vulnerable person is being exploited or a person is acting against her own interest due to a lack of capacity.

After we have determined with our client that there is no way to avoid guardianship, we normally require a \$5,000 retainer to be placed in our trust account and then charge hourly from that retainer. We hope that amount will be sufficient to establish the guardianship and file the initial required filings. Once established in the Florida court, guardianship is an ongoing open matter that requires we report to the court annually. Fees can be charged against the estate of the ward and reimbursed to the client under most circumstances.

Guardianship, when necessary, is there to be an important protective action taken on behalf of a vulnerable individual. However, it is imposing and difficult because a court, rather than family, is protecting the person's rights and watching out for the ward. This explanation of our processes is to help you understand how we deal with guardianships in general knowing each case has its own unique circumstances.

A Final Note: After your first meeting with us, and as long as you proceed, you become part of our "Family of Clients" and we like to continue to contact you periodically by sending our monthly E-Newsletter, occasional cards or notices of events put on by our office. We want to keep up with you but if you do not wish to hear from us, please let us know and we will honor your wishes.

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