

Advance Planning Caring for Others: Conservatorships and Guardianships

Planning is essential to ensure that your wishes are carried out-- even if you think that your loved ones know what you want. To maintain as much control over your personal care and financial affairs as possible, you will likely want to avoid a conservatorship or guardianship, since both procedures give another individual (maybe someone you otherwise would not have chosen) the power to make decisions for you when you are no longer able to care for or make decisions for yourself. You can avoid this by creating an advance health care directive and/or power of attorney for financial affairs. However, if you or your loved one is unable to make plans ahead of time, the following provides some brief information on both conservatorships and guardianships. Keep in mind that these processes might have different names in different states.

Conservatorships

What is a conservatorship?

A conservatorship is a judicial procedure that appoints someone to take charge of a person's legal, financial, and personal affairs when they are deemed not legally competent (are not able to make decisions for themselves). This determination is made by a doctor or judge. The person appointed to take charge is called the conservator and the person who can no longer make decisions for himself is called the conservatee. You can have a "conservatorship of the person," in which the conservator makes decisions about the conservatee's personal needs, including medical care, food, clothing and residence. There is also a "conservatorship of the estate," in which the conservator would make decisions about the financial affairs of the conservatee.

How is a conservatorship created?

A conservatorship can be created through a court process. This involves submitting a petition by someone who is asking to be appointed as the conservator, or by someone who is requesting that they have a conservator appointed to them. The petition must contain information on why the individual cannot manage his or her financial affairs or make decisions concerning his or her personal care.

The court will conduct an investigation to determine whether the person is incapacitated and whether appointment of a conservator is required. The court will hold hearings to determine what types of powers are to be granted to the conservator.

What are the advantages and disadvantages of a conservatorship?

There are advantages and disadvantages to having a conservatorship. Advantages include a higher degree of protection for the conservatee. The conservator must file reports, inventories, and accounting with the court and the court investigator visits the conservatee regularly to determine whether the conservatorship is still necessary. The disadvantages include the cost of legal proceedings and the requirements to return to the court for approval of various transactions. Additionally, the details of the conservatorship become public record. Lastly, as indicated above, there is a possibility that the court will appoint an individual whom you would not have chosen to

be in charge of your personal and/or financial affairs, and this person may make decisions contrary to your wishes. They are, however, legally required to make decisions that are in the best interest of the conservatee.

Guardianships

What are guardianships and how are they different from conservatorships?

A guardianship is like a conservatorship in that it is a judicial procedure that places one person, known as the guardian, in charge of another person who may not be able to care for himself or herself, known as the ward. Depending on the state in which you live, the ward can be a child or an incompetent adult (a person who is not able to manage his or her own affairs because of a mental or physical disability).

In some states, such as California, a guardianship is used only for minor children, while a conservatorship is used for incompetent adults. However, in other states, a guardianship is used for both minor children and incompetent adults. In these states, a guardianship is used for personal care, like a “conservatorship of the person,” whereas a conservatorship is only used for financial affairs, like a “conservatorship of the estate.” In this situation, you can use a guardianship or a conservatorship for minor children and incompetent adults, but the powers that the guardian or conservator have are different.

It is important that you find out how your state defines these two terms, so you can ensure that you request the appropriate legal obligations for yourself or for another on behalf of yourself.

Resources

For more information on conservatorships or guardianships, we suggest you contact the following resources and organizations:

Family Caregiver Alliance <http://www.caregiver.org/caregiver/jsp/home.jsp>

(A national organization that has a variety of information and research on caregiver issues. Offers a state-by-state directory for people to locate publicly-funded caregiver support programs in all 50 states, and offers work-shops and presentations to the public)

National Guardianship Association
174 Crestview Drive Bellefonte, PA 16823-8516
(877) 326-5992, <http://www.guardianship.org/>

(A national organization dedicated to educating guardians and promoting guardian rights. Provides information on guardian standards, issue in guardianship, certification information and additional information through webinars)

You may also want to contact your state bar association to gather the forms you may need to fill out or for lawyer referrals that specifically deal with issues involved in creating a conservatorship or guardianship in your state.

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