

Everybody Has a Plan, so Why is There Guardianship?

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In a perfect world, everyone would have a plan, and every part of it would come into effective play as we age and become less able to manage our own affairs. Those who are named as Trustees and Powers of Attorney for Health Care and Property would be alive, well, and ready to serve at the appointed time.

Real life can, however, offer some exceptions to this ideal. Sometimes the family members or friends designated to oversee our affairs are encountering health problems of their own, at precisely the time we need them. Occasionally, they pass away before we do. In some terrible instances, they will take our money and use it as their own. And, surprisingly, many people arrive at old age without ever having made a plan.

Why Can't I Manage My Own Affairs?

We all plan to remain bright, witty and fully aware of our life details right up until the time we pass gently and painlessly away. With this hopeful scenario in mind, some people never get around to drafting the documents that will protect them and ensure their wishes are honored if they ever develop dementia, suffer a brain injury, or otherwise lose the capacity to make and communicate decisions for themselves.

Dementia is one of the most common reasons a person needs other parties to make decisions on their behalf and ensure they are safe. If an individual has legally named Powers of Attorney to represent them and their wishes, and these people are able to serve, they can step in and take over when the time is right. But if no such designations have been made, or the person named to act is deceased, incapacitated, unwilling or ill-intentioned.....a problem arises.

Guardianship and How It Works

A guardian (or a conservator in some states) is entrusted by the law to care for another person, his/her estate, or both. The guardian acts as a substitute decision maker and is able to sign contracts, agree to medical procedures, write checks and otherwise manage the ward's affairs, as the court determines.

A guardian is appointed and overseen by the court. The court must see evidence that the prospective ward is not competent – this evidence usually consists of a medical doctor's report that indicates an exam has taken place and the doctor has determined the person is no longer able to understand options and make decisions. The capacity to manage one's own affairs can be influenced by mental deterioration or illness, physical incapacity, developmental disability, chronic intoxication and gambling addiction.

Once the court determines that guardianship is appropriate, a Guardian of the Person will be named, as will a Guardian of the Estate. This can be one and the same person. Sometimes a bank will act as Guardian of the Estate, but a bank cannot act as Guardian of the Person.

The judge will also discern the type of guardianship that is most suitable:

- Temporary (used in emergency situations and lasting no more than 60 days);
- Plenary of the Person (the guardian has broad ability to make decisions concerning the person);
- Plenary of the Estate (the guardian has broad ability with respect to property and financial matters);
- Limited (the ward retains ability to make some decisions and the guardian makes others).

Who Can be Guardian?

The first choices to play the role of guardian are family members or friends. A guardian must be at least 18 years old, be mentally sound and have no felony convictions. They must also act in the ward's best interest.

When there are no suitable family members or friends to act as guardian, third party options offer a viable alternative. In Illinois, the Office of the State Guardian will act when an estate is smaller than \$25,000 and is a state funded program. The Office of the Public Guardian can act for estates over \$25,000. In Illinois, these offices are politically appointed and charge the estate for their services.

A private guardian is a not-for-profit, non-governmental agency, usually staffed by social workers, attorneys, nurses and other professionals. Private guardians charge for their services, and can be a neutral voice when families disagree.

Where to Begin?

Guardianship is a legal process. An attorney's services will be needed. Seek counsel before agreeing to become someone's guardian as there are both requirements and limitations governing what the guardian can and cannot do. It is a job for which one should be educated and prepared.