



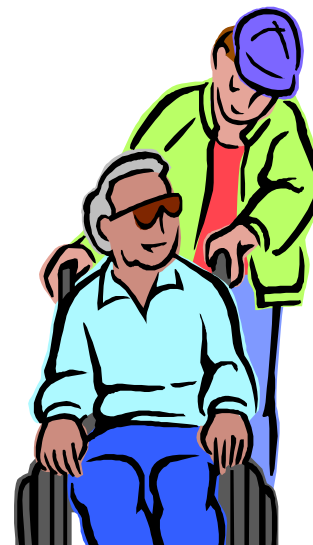
Guardianships

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Guardianship Proceedings

Help, my mother did not execute a Power of Attorney, Health Care Proxy, or Living Will. She is disabled and unable to manage her affairs. Now what?

If your loved one did not execute any documents appointing you as her agent, then you do not have the legal authority to make financial or health care decisions on her behalf. As a result, you need to commence a Guardianship Proceeding.

Guardianship Petition

A Petition for Guardianship must be made to a Court. Guardianship Proceedings are often costly and time-consuming and usually can be avoided by having the proper documentation in place.

Once a Petition is filed, a Court Evaluator is appointed to talk to the Alleged Incapacitated Person (the “AIP”) and Petitioner to evaluate the need for a Guardian, as well as who the proper Guardian would be. A Court hearing takes place, and the Judge will appoint a Guardian.

Appointment of Guardian

Who should be the Guardian for the Incapacitated Person?

The Court Evaluator and Judge will evaluate the circumstances and meet with the Petitioner, and upon hearing testimony will decide who to appoint as Guardian. A close family member will likely be the Court’s first choice, but this is not necessarily the case. Someone who has been active in the care of the AIP prior to the proceeding will be considered strongly as well.

Once appointed, the Guardian will have such powers as the Court provides with respect to the now Incapacitated Person (the “IP”). Generally, the Guardian is granted the power to handle the finances of the IP. This includes managing the IP’s income and paying expenses.

The powers granted may even include authority to do Medicaid planning to preserve the IP’s assets.

Other powers will include power over the actual person. This means that the Guardian will have control over where the IP lives and have the authority to make health care decisions for the IP.

Requirements for the Guardian

- The Court will require that the Guardian take a Guardianship Training Course.
- A bond may also be required.
- Annual Accounting Reports: The Guardian will have to report annually to the Court about how often he saw the IP and about the status of the assets. The Guardian will have to account for all deposits and withdrawals into the Guardianship Account.
- The Guardian will be required to visit with the IP several times a year.

If you know someone who needs a Guardian appointed to assist with their care and affairs, you should consult with a professional experienced in this area of law.