

GETTING HELP FOR AN ADULT WHO CAN'T MANAGE ALONE

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You may be in the stressful situation of trying to help your parent or family member make decisions about their healthcare and living situation. You might be caring for an elderly parent in their own home or in your home right now. Life changing decisions need to be made about their medical care and treatment, including whether to keep the person in their own home with in-home care, in your home, or move them to an assisted living setting. Each family situation is different.

There are legal tools that can help you provide the best possible care to the person for whom you are concerned about. Whatever your specific situation, moving forward can be very difficult if the person for whom you are concerned is unable to make good judgments, or is unable to communicate his or her decisions. However, you can resolve these complex issues most effectively by understanding your options. Powers of attorney, guardianships, and conservatorships allow for decisions to be made on behalf of your loved one.

Powers of attorney are the preferred method for a person to designate a decision maker. If there is no power of attorney, or it is too late for a person to execute a power of attorney, a guardianship or conservatorship is available.

Often times, the individual for whom you are concerned already has a health care power of attorney in place. While this may be beneficial, sometimes a guardianship is necessary. Should the person become uncooperative or antagonistic towards the agent, a guardian offers the only way for that person to receive adequate care, treatment, and placement.

A guardian is court-appointed to make personal decisions for somebody who is legally incapacitated, called the "ward." If appointed to act as guardian, your responsibility to the ward would be similar to that of a parent to a child, except you would not be financially responsible for the ward. Guardians are often put in place for a person who lacks the understanding or capacity to make or communicate responsible personal decisions. To help you assess whether pursuing a guardianship is necessary, begin by evaluating the following questions:

- Does the person have difficulty doing familiar tasks?
- Can the person communicate well?
- Does the person remember to take medications as prescribed?
- Does the person become easily agitated, aggressive, or combative?
- Does the person often lose things?
- Does the person ever get lost or disoriented?
- Can the person attend to and provide necessary food, shelter, clothing, and medical care so as to avoid physical harm or illness?
- Could the person remain safe in a stressful or emergency situation, such as a fire, a power outage, or crossing a busy street?

As a guardian, there are many duties one must uphold. A guardian must always consider the ward's wishes, and assume responsibility of the ward's care, comfort, and maintenance. This includes finding appropriate living arrangements and arranging for appropriate medical care and professional services for the ward. Should a guardian receive any money on the ward's behalf, it must be used only for the ward's care and support. A guardian can only manage up to \$10,000 of the ward's money. If the ward has assets or income above \$10,000, a conservator should be appointed. One of the duties of a guardian is to make annual reports to the court about the ward's health, welfare, and status.

As a guardian, you can only consent to outpatient mental health treatment on the ward's behalf. If the ward requires inpatient mental health treatment, a mental health guardianship is necessary.

A conservator is court-appointed to make financial decisions for somebody who is legally incapacitated, called the "protected person." The court can give conservators very broad authority to handle all of the protected person's assets, or very limited powers. If appointed to act as conservator, your responsibilities would be confined to financial and legal matters, and would not extend to handling the protected person's medical issues.

You might consider seeking a conservatorship for a person who has lost the capacity to properly manage his or her property, and who does not have a valid financial power of attorney. A conservatorship might even be necessary for a person with a financial power of attorney if the agent under the power of attorney fails to act in the person's best interest. When deciding whether to pursue a conservatorship, you should evaluate answers to the following questions:

- Can the person handle simple financial matters, such as counting change, writing checks, and balancing a checkbook?
- Is the person susceptible to financial scams and persuasion?
- Does the person know what and where his or her assets are?
- If a conservator is necessary, their duties include:
 - Authorizing and paying debts and expenses for the protected person.
 - Bringing and defending lawsuits for the protected person.
 - Making an inventory of the protected person's assets, indicating the fair market value of each asset.
 - Prudently investing the protected person's assets.
 - Acquiring or disposing of the protected person's property.
 - Preserving and protecting the protected person's property.
 - Paying income and property taxes for the protected person.
 - Keeping detailed records of all monies coming into or going out of the protected person's accounts.
 - Providing the court with an annual accounting.

Each conservator's responsibilities ultimately depend on the court's order. However, one rule that is always in place is that you can never use the protected person's money for your benefit or anyone else's benefit without court approval.

To have a guardian or conservator appointed, you begin by petitioning the court for a guardianship, a conservatorship, or a combination of the two. You must also give notice of the proceeding to the person for whom you are concerned, and to any other interested parties. The court appoints an attorney to represent the proposed ward or protected person, as well as an investigator and a medical expert to assess the person's capacity.

The court schedules a hearing to hear all relevant testimonies. This entire process takes about six to eight weeks. In the case of a financial or medical crisis you can petition the court for an emergency appointment. This petition should only be filed if the proposed ward could be harmed by waiting the six to eight weeks.

The court can appoint one person as guardian and another person as conservator, or the same person to act in both capacities. The court issues the guardian and/or conservator letters of appointment, which verify that the appointed person has authority to act on behalf of the ward/protected person.

When preparing for the future it is always recommended you receive legal guidance and to make legal preparations sooner rather than later. More often than not, making advance preparation can help you avoid future complications.

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