

Power of Attorney vs. Guardianship

For many, their first exposure to the challenges of aging are experienced through a parent with diminishing mental abilities. Whether it's forgetting which bank has the checking account or not remembering the names of medications, financial and medical problems abound for those suffering from dementia and other mental deficiencies. Adult children often have no reason to consider declining mental acuity and are completely unfamiliar with the challenges their elderly parents face until an incident occurs and it's too late. Perhaps the most important legal document for an elder parent to have is a Durable Power of Attorney. A Durable Power of Attorney can avoid complicated and costly legal proceedings often forced to be undertaken by an adult child.

When mental ability has declined to a point where the elderly can no longer meaningfully receive, process and convey information regarding their own well-being, they are considered legally incapacitated. This means they no longer have the power to execute legal documents that would allow others to provide for their well-being and make medical and financial decisions on their behalf. In these situations, a court may appoint a Guardian of an incapacitated person to make such decisions.

While Guardianship provides a solution to an otherwise impossible



circumstance, it is a formal court proceeding with attendant costs and complications. Courts are very careful when it comes to Guardianship because a declaration of incapacity essentially obliterates the individual's personal autonomy. Once a Guardian is appointed, he or she has the ability to make medical and financial decisions on behalf of the incapacitated person without consent. Such a powerful appointment requires commensurate safeguards of the alleged incapacitated person's rights.

To protect the incapacitated person, Guardianship proceedings are very formal.

The process begins by filing a petition to adjudicate the person incapacitated. The petition must meet very particular requirements. The alleged incapacitated person must be given advance notice of the hearing by which he/she may be adjudged incapacitated. The person has a right to be present at the hearing, to be represented by counsel, and to testify on his/her own behalf. Advance notice of the hearing must also be provided to all known living relatives who may also be present and testify at the hearing.

A doctor must testify that the alleged incapacitated person suffers from a mental deficiency that prohibits the individual from receiving and evaluating information effectively and making and communicating decisions to such an extent that the individual is unable to manage financial resources or to meet essential requirements of his/her physical health and safety. If the alleged incapacitated person is not present at the hearing, the court must be satisfied by the testimony of the medical professional that the presence of the alleged incapacitated person would be harmful to the individual. Guardianship is a means of last resort. As such, a Guardian can only be appointed if no less-restrictive alternative exists.

Being a Guardian is a solemn and onerous undertaking. Once a Guardian is appointed, he/she is responsible for the physical and financial well-being of the incapacitated person. The Guardian is required to visit the individual and handle financial and medical decisions. To protect the incapacitated person from physical and financial abuse and neglect, the Guardian must provide annual reports to the court for the remainder of the Guardianship—often until the incapacitated person dies.

A simple legal document called a Durable Power of Attorney can avoid the costs and complications of undertaking a Guardianship. A Durable Power of Attorney allows you to appoint an Agent to act on your behalf in financial and medical matters should you be unable to make or communicate decisions on your own. The relative cost and ease of obtaining and utilizing a Durable Power of Attorney provides loved ones the ability to efficiently provide care and support, making it one of the most important legal documents an elderly person can have.

Nursing Home Worries?

Are You Worried about Losing Your Home or Life Savings to the Cost of a Nursing Home?

Are You Concerned About How to Pay for Your Loved One's Expensive Nursing Home Care Without Going Broke?

Do You Want to Avoid Placing Your Loved One in a Nursing Home?

Are you a Veteran and Interested in Possibly Receiving an extra \$2100 a Month?

Are you the Spouse of a Veteran and Interested in Possibly Receiving an Extra \$1100 a Month?

In Pennsylvania, the Average cost of a Nursing Home is over \$97,000 per year.

How Much Can You Afford? Are You Prepared? Call Zacharia & Brown



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