

Guardianship: What Is it and When Is it Needed?

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When a person becomes incapacitated and unable to effectively manage his or her financial and property affairs or make decisions regarding their healthcare, a Guardianship may be necessary. The Court will appoint a guardian to care for that person and his or her assets unless s/he made arrangements for his or her care before s/he became disabled. A

Guardianship is needed when a person is unable to make or communicate informed decisions concerning her personal care or finances. Because a Guardianship essentially removes the right to make decisions from the disabled person, the court ensures that no less restrictive form of intervention is available, i.e., through a Power-of-Attorney designation or an Advanced




son to be guardian before the person became disabled; the spouse of the disabled person; the adult children of the disabled person; and other relatives. The Court, however, has the authority to appoint someone other than a family member if good cause is shown to do so. In the event that no one is willing to serve as guardian, the Court may appoint an institutional guardian, such as the Department of Aging or Department of Social Services, as the guardian of the

person. An attorney or other private person may be appointed to act as guardian of the property.

If a Guardianship is necessary, one wishing to be appointed guardian must file a petition with the Court, attaching two certificates from physicians certifying that the person who is alleged to be disabled is, in fact, disabled. The petition must contain detailed reasons why a guardian is necessary and state that there is no other less restrictive alternative available, such as a power of attorney or medical directive. All interested parties must be notified of the guardianship petition. Because a guardianship takes away a person's right to make decisions for themselves about where they will live, what medical care they will receive or how their finances will be managed, the Court must appoint an attorney to represent the alleged disabled person if they do not already have one. A guardianship takes away significant rights from a person, and, as a result, the court will carefully review the petition and the testimony of all persons involved. A guardianship may be routine and brief if the court appointed attorney agrees that a guardianship is necessary and the interested persons do not object. If, however, court-appointed counsel does not agree that a guardianship is necessary, or the interested persons are objecting to the guardianship, or the appointment of a specific guardian, there will be a trial, perhaps even a jury trial, contesting the person's need for a guardian or determining which of the guardian candidates should be appointed.

If you are appointed

guardian, you are an instrument of the Court. You must act in the best interest of the disabled person. The guardian has discretion in the actions he or she can take on behalf of the disabled person, although approval of the court is required for certain actions, such as a change of living arrangements, the withdrawal or withholding of life-sustaining medical procedures, or the selling of certain assets to pay for the disabled person's care. Ultimately, the court is the guardian, and the person who is appointed by the court to serve in that capacity must file annual reports with the court regarding the person's care, living arrangements, and finances.

If you have a loved one who you believe is in need of a guardian, please contact Margaret H. Oliver, at Hodes, Pessin & Katz P.A., for more information. 

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Medical Directive. At times, a Guardianship may be necessary if there are family disputes regarding the appropriate care for the disabled person. Normally, a Durable Power of Attorney and Advanced Healthcare Directive will avoid the need for a Guardianship if you become disabled, however, sometimes there are conflicting Powers of Attorney held by two siblings, or a spouse and the disabled person's children. Unfortunately, there are also times when disabled persons are taken advantage of by family members and loved ones and powers are repeatedly revoked and given to someone else.

Maryland law establishes a priority of persons who may be chosen as a guardian. The set priority for persons who may be chosen as a guardian are as follows: a person nominated, in writing, by the disabled per-

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Margaret H. Oliver, Esq.

and the Family Law Team at Hodes, Pessin & Katz, P.A. are ready to assist you with all of your domestic legal issues. From divorce to custody disputes to delinquent child support payments, HPK's attorneys have the experience to resolve the issues and to help their clients rebuild their lives and the lives of their families.

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