



What is Guardianship?

Guardianship, referred to in some states as conservatorship, is a legal proceeding, when an adult can no longer make or communicate safe or sound decisions about his or her person and/or assets. The individual may also become susceptible to fraud or undue influence, leaving them vulnerable to scam artists or identity thieves. Guardianship provides protection and care for adults with dementia, mental illness or other mental impairments.

The Need

When a person is unable to make informed decisions for himself or herself due to a mental incapacity, whether those decisions involve health care or finances, someone else needs authority to assume responsibility for that person's affairs. Unless someone else has pre-existing legal authority to act, the court must be asked to appoint someone to assist.

If a person cannot make his or her own informed decisions, the court will be asked to appoint a guardian or a conservator, depending on the laws of the state where the person resides or is found.

About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder Law Attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with disabilities, and who advocate for the needs of such individuals.

While NAELA Elder Law attorneys work one-on-one with clients in their local areas, NAELA also examines and advocates on national public policy issues facing seniors in America including long-term health care; planning for retirement; estate planning and probate; guardianship and conservatorship; health care decision making; and elder abuse and neglect.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder Law attorney.

More information on NAELA and a directory of NAELA members in your area can be found at www.NAELA.org.

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Guardianship & Conservatorship



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What You Need to Know



A guardian or conservator can be appointed for any person who needs assistance making decisions, such as: an older person, a person with disabilities, a minor, a person temporarily incapacitated, and, in some states, a person who desires a voluntary guardianship for his or her

property. A guardian is sometimes necessary to prevent the exploitation or abuse of a vulnerable person, or to recover assets wrongly taken from the vulnerable person. A guardian or conservator can only be appointed if a court hears evidence that convinces it that the person lacks mental capacity in some or all areas of their life and needs assistance. The person alleged to be incapacitated has a right to an attorney and to object to the appointment of a guardian or conservator for him or her.

A person who has a guardian or conservator appointed for him or her is often called a “ward”. Guardians and conservators have great power, but are required to report to the court. Guardians frequently make decisions about where their ward will live, with whom the ward associates, how the ward’s property is invested, what type of financial benefits the ward needs, and the type and scope of health care needs required by the

ward. Whenever possible, the guardian or conservator must seek the input of the ward and must only act in areas authorized by the court.

Guardians and conservators are frequently required to post a bond, or place the ward’s funds into protected financial accounts that can only be used with prior court approval. Guardians and conservators will often need to seek the court’s permission before selling or disposing of property, before entering into contracts, and before making major decisions about the ward’s life. At the time the guardian or conservator requests court permission for these actions, the ward is often entitled to notice of the request being made, and the ward’s spouse, children and other next of kin may also need to be notified. Guardians and conservators are also required to report to the court regarding their ward’s property, finances and expenditures, usually on an annual basis, or more frequently as the court may require. They are also typically required to report at least annually about the ward’s person and his or her health care needs.

Guardianship or conservatorship, when properly used, are beneficial methods of protecting an incapacitated person for whom no other means are available to assist with making informed decisions. The continuing involvement of the court provides added protection for the ward and those interested in the ward’s welfare.

Where to Go For Help

If you know a family member or friend who needs the assistance of a guardian or conservator, you should contact an attorney who is familiar with this area of the law so that the correct documents can be prepared and filed with the appropriate court, and so the correct procedures will be followed. The attorney knowledgeable about guardianship or conservatorship should be able to advise you of potential suitable alternatives for assisting the person needing assistance, such as durable powers of

attorney, appointment of a health care surrogate, and living trusts. Some planning options may be available for your family member or friend, even if you believe they need assistance with making some decisions, and an attorney well-versed in this area should be sought.

If someone has filed a court document known as a “petition” which seeks a guardian or conservator for you, you should contact an attorney experienced in this area of the law (if one has not been appointed for you, or if you do not want the appointed attorney). Either a court-appointed attorney or one that you hire can advise you regarding your rights, the procedures that are required, and choices you have. Some issues you may want to discuss with your attorney are whether to oppose the petition for a guardian or conservator; whether to request other options for yourself; whether you can choose your guardian or conservator; and other methods for protecting your legal rights.

The Role of the Elder Law Attorney

Many Elder Law Attorneys have substantial expertise



in establishing, defending, and administering guardianships and conservatorships. When hiring an attorney, you should always inquire about the amount of experience and training he

or she has in your area of concern. Guardianship, conservatorship and the available alternatives are a major part of many Elder Law practices.