

What is Guardianship?

Guardianship is a legal proceeding in which the court appoints a representative known as a Guardian for the individual. The individual is known as the ward. The guardian makes legal, financial, and medical decisions in the best interest of the ward.

There are different types of guardianship: Guardian of Person, Guardian of Estate, and Limited Guardianship.

Guardian of Person: Is responsible for personal welfare of the ward, acts as an advocate for the ward, and authorizes specialized medical care and release of information as needed.

Guardian of Estate: Is responsible for the ward's income and assets and makes sure the ward's assets are used wisely and for the benefit of the ward.

Limited Guardianship: The court makes a specific finding as to which legal rights the person is competent to exercise. Such rights include, but are not limited to, the right to vote, marry, obtain a driver's license, or other state license, and the right to contract. A stand-by guardian is appointed by the court to assume the powers of the existing guardian immediately upon his/her death, incapacity, or registration. A stand by guardian can be established at any time, but is most often done at the initial guardianship hearing.

Establishing Guardianship: Only a court can establish legal guardianship and anyone can petition the court for appointment of a guardianship of another person.

Alternative to Guardianship:

Durable Power of Attorney for health care allows competent adults to appoint an individual to decide health care decisions when they are unable to do so. A DPOA must be in writing and signed in the presence of two witnesses.

Durable Power of Attorney for finances is used when a competent adult gives someone the authority to manage his/her finances. A DPOA gives only the powers the document specifies and can be time limited.

Representative or protective payee is established by a funding agency (SSI, Social Security, etc). It is established by filling out an application along with a statement by physician or psychologist about the person's financial competence.

Dual Signature Account is a voluntary procedure limiting the person's authority to write checks. The checking account requires co-signatures on each check in order for the check to be valid.

Information taken from The Brown County Guardianship and Protective Placement Information for Families and Concerned Individuals and Guardianship Reform: Ellen Henningsen CWAG Elder Law and Reform and Betsy Abramson, Elder Law Consultant

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