

Guardianships and Conservatorships

When an individual suffers from mental incapacity, and he or she does not have a Durable Power of Attorney (DPA) or living trust, a court can grant guardianship and/or conservatorship to someone else. An elder may need either a guardian or a conservator—or both—and one person can be both. Costs for these tend to be much higher than a DPA.

GUARDIANSHIP

A “guardian” is someone appointed to make personal and health care decisions for an incapacitated person. The relationship between a guardian and his or her ward is similar to that between a parent and a child, in the sense that the guardian is responsible for caring for the affairs of the ward—including where the ward will live and what medical care the ward will receive. In some states, guardianships refer to the appointment of a person to handle a minor’s affairs (a person under 18 years of age), and there can be a guardian of a minor’s person and/or a guardian of a minor’s estate.

CONSERVATORSHIP

A “conservator” is someone appointed to handle the financial affairs for an incapacitated person. Conservators are responsible for controlling all of the protected person’s assets—including all investing, spending, and income decisions. The protected person will not be able to sell his or her property, make an investment or spend freely without the consent of the conservator. There can be a conservator for one’s person (for housing, medical, and other personal decisions), and/or a conservator for one’s estate (financial decision making.)

How to Get Guardianship and Conservatorship

Because guardianship and conservatorship grant a person responsibility for someone else, the courts take them very seriously. They are not granted easily, and the process for obtaining them is long—with many built-in checks and balances. This elaborate process is meant to protect potential wards from abuse or mistreatment.

Generally, the state courts handle requests for guardianship and conservatorship—called “petitions”—which are filed by the person seeking to be a guardian or conservator. It is usually a good idea to work with an elder-law attorney in drawing up and presenting this petition.

The hearing includes an evaluation of the incapacitated person by medical and mental health professionals to determine whether the person is incapacitated, and whether having a guardian and/or conservator would be in his or her best interest. The court will also probably appoint an attorney to represent the incapacitated person if they do not already have one. The court will also evaluate the qualifications and competency of the person seeking guardianship or conservatorship.

After a guardian and/or conservator has been appointed, the court will request regular reports and/or financial accountings from the guardian and/or conservator, and will periodically review the situation to make sure that the interests of the incapacitated person are protected.

It’s a good idea to find and work with an attorney specializing in elder law when seeking guardianship or conservatorship.

