

Guardianship and Conservatorship

Sometimes it is necessary to take control over someone, if they are unable to take care of themselves or they are being abused. A guardian is appointed to make medical decisions and living arrangement decisions. A conservator is appointed to make financial decisions and to file annual accounts as to how the funds are being spent.

While a person is competent they are able to designate agents to act on their behalf by using documents called Durable Powers of Attorney. A Health Care Durable Power of Attorney designates a Patient Advocate and can lay out the guidelines of medical decision to be made in the event that the person is not able to make medical decisions for themselves. A financial Durable Power of Attorney designates an agent to make almost all other decisions, either upon disability or immediately. See Estate Planning section.

When an individual is no longer competent to care for themselves the agent designated under a power of attorney can act for them without court intervention. This means that there is no oversight by the courts or anyone else. Sometimes this becomes a problem if the agent is not acting in the best interest of the incapacitated person. At that time another person may seek court intervention to have a guardian and/or a conservator appointed.

When the court becomes involved and the incapacitated individual named an agent through either a Durable Power of Attorney for health care or finances, the court will first look to that named agent. If the court does not feel that person is appropriate the court will name someone else. This can be a real fight in some families.

A guardianship or conservatorship should not be considered lightly. This court action takes away the rights of the person involved to make their own medical and financial decisions. An agent under a durable power of attorney acts only as long as the person who signed the documents wants them to. Durable powers of attorney are completely revocable, while guardianship and conservatorships are court orders and can only be changed by the court.