



Succession Planning for Guardians

When life is busy, planning ahead can be difficult. For those who are caring for a loved one with a disability there is so much to do in the present that planning for the future can be difficult and overwhelming. If a court has determined that the loved one lacks the capacity to make decisions regarding personal affairs, the courts will have appointed a guardian (in some states called “conservator of person”). It is important for anyone who is acting as a guardian to create a succession plan so that in the event of the guardian’s incapacity or death, there is another party who can assume the legal role and responsibilities of the guardian.

In some cases, a guardian may decide that the best way to plan for the unexpected is to share responsibilities with a co-guardian. Alternatively, some guardians prefer to remain sole guardian for their lifetime. The guardian may write a letter of intent and make careful plans with private caregivers and case managers, family, and friends, so that during the transition before a new guardian is appointed there are measures in place to assure that the incapacitated adult (often referred to as the ward) is well cared for.

While there are many ways for a guardian to develop a succession plan, and an array of things for a guardian to consider when developing a plan, one thing is certain: the plan should focus on how to maximize the quality of life, needs, and preferences of the ward.

Starting a conversation

A conversation about who may be considered for the role of successor guardian should start with the ward. Sometimes it can feel uncomfortable for a guardian to talk about the need for transition planning, so it may be easier to talk about the benefits of designating a successor guardian. The person designated as successor guardian can be another advocate for the ward and someone to help plan birthdays and holiday celebrations and participate in activities that the ward enjoys. In cases where the ward may struggle to engage in this conversation, talking to people who are members of the ward’s immediate family and care team is a good idea. If there is a family member or friend who is already actively involved in the ward’s life and whom the ward trusts and feels comfortable with, then this person should be invited to join in some of the planning discussions. After all, the person may be well-suited to the role of guardian but may not want to serve. Even if the person does not want to serve as a guardian, his or her perspective and advocacy on the ward’s behalf can be helpful. Soliciting input and support from the circle of friends and

family who are close to the ward can make the planning process less daunting and can also make the transition to a successor guardian more successful.

What does succession planning entail?

The guardian's succession plan should include both a plan to share or transfer the legal authority of guardianship to a successor guardian and a plan to share important personal and medical information about the ward with the person who will become the successor guardian. For many families, when an aging parent or spouse is acting as guardian, there is an opportunity to begin a conversation about whether siblings or adult children may want to be appointed as co-guardians with the current guardian so that they have an opportunity to work together before it becomes time for the long-time guardian to step aside. While this can provide a smooth transition plan for many guardians and the least disruption for the ward, the successor guardian must still be appointed by the court.

The Court

A guardian is appointed by the court, and the court will need to consent to any changes to the guardianship, including the appointment of a co-guardian, the removal of a guardian, or the appointment of a successor guardian. Some state laws allow a successor guardian to be appointed in advance of a specified event (such as the incapacity or death of the guardian), and in these cases, the successor guardian will only be able to begin serving when the designated event occurs. It is important to keep in mind that the court process can take time. While it may take only twenty-four to seventy-hours to appoint a temporary guardian in an emergency circumstance (such as the death of the guardian), the permanent appointment of a successor guardian could take four to eight weeks or more, depending on the court's calendar and state regulations. For this reason, it is important to plan ahead and allow ample time for the Court process.

In existing guardianship cases, when a successor guardian is appointed or an individual is added as a co-guardian, it will not be necessary to re-establish the ward's need for a guardianship. Instead, the court will need to be informed about the circumstances justifying the change in guardian. The court will take the ward's preferences into account and decide, based on testimony and evidence, whether appointing the new guardian is in the best interest of the ward. The ward and the interested parties must all be provided with copies of the documents filed with the court and provided with an opportunity to object. Many state laws provide an order of priority about who may be appointed guardian, and in cases where multiple family members want to become successor guardian, the court will rely on this statutory authority, in addition to the ward's preference and the evidence offered, when appointing a new guardian.

Once appointed, the new guardian will be required to go through the same certification process as the original guardian and to follow the court's orders. The successor guardian will have the same powers that the original guardian had, unless the court modifies the powers. If the court is appointing co-guardians, the court will need to decide whether to bestow independent authority on the guardians so that either guardian may act without the consent of the other, or whether to appoint the guardians with joint authority, requiring them to provide their mutual consent before decisions can be made. For purposes of succession planning in guardianship cases, many people feel that appointing co-guardians with independent authority is preferable, because it will allow one guardian to act if the other is unavailable.

Sharing Information

Once a successor guardian has been appointed, the successor guardian will need to collect two different types of information about the ward: medical information and personal information. Guardians can review medical information that might normally be kept confidential due to HIPAA privacy protections. Medical information will include the contact information of the ward's current medical providers, the ward's upcoming medical appointments, and information about current medications, past medical procedures, and any short-term or long-term medical issues that the ward faces. Once appointed, the new guardian or co-guardian should present the documentation from the court showing his or her authority to the medical providers and members of the ward's care team, so that they will have this on file and will release information when asked. However, while a new guardian or co-guardian will have the authority to request a copy of the ward's medical records, the predecessor or original guardian will usually have the best overall grasp of the ward's medical history and current medical conditions and should be consulted if possible.

The newly appointed guardian will also need personal information about the ward. Personal information about the ward's preferences may not be written down. For instance, what is the ward's favorite food? What is the ward's preferred method of communication? Does the ward like music, outdoor activities, animals, or group activities? These details are critical, because they can help the new guardian connect to the ward and can impact the guardian's decisions. Often these details are overlooked during succession planning because people are so focused on traditional issues such as medical recommendations, placement, medication management, and care management.

Conclusion

Every succession plan is different because the plan should be based on the needs of the individual ward and guardian. Formulating a plan can take time, and by making plans in

advance, there will be time to explore ideas and solutions. It is a good idea to hire an attorney who is familiar with guardianships and the rules about succession planning to help navigate the court process. Honesty is important so that the guardian, ward, and the team of providers and loved ones who work with the ward can communicate openly about who may be a good candidate to be appointed co-guardian or successor guardian and can speak up when concerns or problems arise. A thoughtful plan will allow the appointment of a successor guardian who will prioritize the ward's quality of life and make the ward's needs and preferences the guiding force behind future decisions.

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