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Questions and Answers About Guardianships - A Guide for Parents

When your child turns 18, in the eyes of the law, he or she is now considered an adult and legally responsible to make decisions for him or herself. For many parents of young adults, especially those with special needs, this can cause a significant concern. To ease this concern, a guardianship, conservatorship, or power of attorney may be established to grant parents the legal authority to continue to make decisions for their children. Below are some frequently asked questions and answers about guardianships and alternatives.

Like each individual, each situation is unique. This document is intended to provide only general information. If you have any questions about guardianships, conservatorships, or powers of attorney, you may contact me at the law offices of Resch and Root, LLC at (614) 923-5768.

Terminology:

Guardian(s) – an adult person(s) appointed by a Probate Court to act on behalf of a disabled adult.

Ward – a disabled adult for whom the guardianship is established.

What is a Guardianship?

A guardianship is a court-ordered relationship in which a parent is authorized to make decisions for and act on behalf of their adult child. Both parents can be appointed as guardians. In addition, a parental relationship is not a prerequisite for a guardianship, another responsible adult can serve as guardian.

How do I know if a Guardianship should be established?

To establish a guardianship of your adult child, the child must be considered incompetent. A person is considered incompetent if they are incapable of taking proper care of themselves or their property. Some questions to ask yourself about your child include: Can he/she take care of themselves? Would he/she be at risk if they were left on their own?

What types of Guardianship can be established?

- Limited Guardianship –
A relationship where the guardian has control only over a portion of the Ward's life.
- Guardianship of the Person –
A relationship where the guardian controls and protects the personal needs of the Ward.
- Guardianship of the Estate –
A relationship where the guardian controls and protects the assets of the Ward.
- Plenary Guardianship –
A combination of the authority of both the Guardianship of the Person and Guardianship of the Estate.

How is a Guardianship established?

The parents file an application in the Probate Court of the county where the child lives. After the application is filed, a Probate Court official will visit the child and make an independent assessment regarding the need for the guardianship. The court will schedule a hearing before a Probate Judge or Magistrate at which time a determination will be made as to the necessity for the guardianship and the suitability of the applicant. A similar process is followed to obtain a conservatorship.

Are there Alternatives to a Guardianship?

A guardianship is not always necessary (or recommended) in every case of a mentally disabled adult child. Incompetence must be shown before a guardianship can be established.

Where mental disability does not rise to the level of incompetence, a Health Care Power of Attorney may be signed by the adult child granting his or her parents with the authority to make health care decisions for the adult child in the event he or she is unable to do so. In addition, a Financial Power of Attorney may be signed by the adult child to grant to his or her parents the authority to help manage his or her financial affairs.

A conservatorship is a voluntary application filed by a competent adult child who has a physical disability. The conservatorship allows the competent adult child to select his or her parents to become conservator of the person, of the estate, or both for a definite or an indefinite period of time. If appointed, the conservator has the same rights and responsibilities as someone appointed guardian. A conservatorship lasts for a period of time determined by the court or until the competent adult executes a written notice of termination and files it with the court.