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ESTATE PLANNING ATTORNEYS



Guardianship

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What is guardianship?

- Person, agency, or financial institution appointed by court to manage affairs of another
- Parents' natural guardianship ends at 18



Types of guardians

- Guardian of the Person: care decisions
- Guardian of the Estate: financial decisions
- Plenary Guardian: broad authority
- Limited Guardian: modified authority



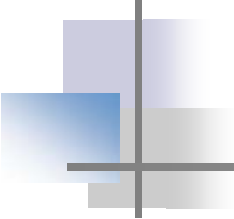
Necessity of Guardianship

- Inability to make decisions
- Inability to communicate decisions
- Causes
 - ◆ Mental deterioration
 - ◆ Physical incapacity
 - ◆ Mental illness
 - ◆ Developmental disability



Alternatives to Guardianship of the Estate

- Property Power of Attorney
- Living Trust
- Representative Payee (for SSI/SSDI)
- Financial counseling and bill-paying assistance programs



Alternatives to Guardianship of the Person

- Health Care Power of Attorney
- Health Care Surrogate
- Mental Health Treatment Preference Declaration
- Community Services



Process: Forms

- Petition: reason for guardianship
- Physician's report
- Oath of office
- Bond



Process: Guardian ad litem

- Independent evaluator of need for guardianship
- Must meet with disabled person and make assessment
- Files written report with court



Process: Service and Notice

- Summons to disabled person
- Notice of hearing to close relatives, proposed guardian, and GAL



Process: Hearing

- Before judge
- Clear and convincing evidence
(after 12/31/03)
- Preponderance of the evidence
(before 1/1/04)



Guardian of the Person Duties

- Personal, medical, and residential decisions
- Custody
- Substituted judgment
- File periodic reports to court



Guardian of the Estate Duties

- Financial decisions
- Financial management
- Some estate planning permissible
- File inventory and periodic accounts with court