

Guardianship and Conservatorship

July/August 2006

Our goal in drafting this newsletter is to educate our readership and answer common questions. If you have a question or topic you would like us to address, please call the office, send us a fax (480-348-1581) or send an email (Emily@azestatelaw.com). We would be thrilled to hear from you! Also if you move, please provide your new mailing address or if you would like to be removed, simply contact our office and provide your name and current address. Thank you for taking the time to read our newsletter.

We are often asked if someone should become the guardian or conservator of a family member or friend.

A guardian is a person or entity who is appointed by the court to make decisions related to health and housing issues. A conservator is a person or entity that is appointed by the court to make financial decisions.

In most instances, if a person executed a valid power of attorney document (for health care or financial matters), a guardian or conservator should not be needed. However, a guardian may still be needed if: the person who is incapacitated requires inpatient mental health treatment and the power of attorney does not specifically state that the agent can make that decision or where a person needs to be moved from their home (to an assisted living facility, nursing home, care home or other arrangement) and refuses to do so.

What is the Process To Become Appointed?

A proceeding must be opened with the court. The person or entity who is interested in becoming the guardian and/or conservator files various papers with the court, including a Physician's Report. The Physician's Report provides information to the court as to the person's ability to take care of himself/herself and/or his or her finances. Once

Both guardians and conservators must file an annual report with the court. The annual report is a summary of how the person is doing since the last report. If the person or the petitioner has moved, the court must be informed of the new address(es). The report is a way for the court to keep up-to-date on how the protected person is doing.

In addition to an annual report, a conservator must file an annual accounting. This document shows the initial balances of each account in control of the conservator. The conservator must keep receipts of all monies spent for the protected person and all income and other monies received. Those are listed on the accounting. This allows the court to stay apprised as to how the protected person's money is being invested and spent. A conservator may not use the money in these accounts to pay their own debts. The person must be very careful not to commingle their own funds with those of the protected person.

As you can see, the process of appointment can be time consuming and burdensome. While not a guarantee, if you have valid power of attorney documents, it is much less likely that a guardian or conservator will ever be needed.

This article provides a brief over view of the new changes, but does not cover all of the changes.

Making the decision about purchasing any type of investment is important. We do not provide financial, tax or investment advice. If you would like such advice, we recommend you seek the advice of a professional who can provide such advice and information.

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the papers are filed, the court sets the matter for a hearing and appoints an attorney to represent the person who is in need of care or assistance and appoints a court investigator to interview the person.

At the hearing, the petitioner (the one who filed the papers asking to be appointed) provides testimony and proof that the appointment of a guardian or conservator is needed and that he/she is the most appropriate person/entity to be appointed.

Sometimes two different people are appointed for the benefit of the protected person. For example, one child may have been appointed to act as guardian and a different family member may be appointed to act as conservator. Also, there are times when the children are appointed as co-guardians or co-conservators.

The Estate Planning and Elder Law Newsletter is written by Emily B. Kile, Attorney at Law. This newsletter is published as a service of the Law Office of Emily B. Kile, P.C., 5429 East Caron Street, Paradise Valley, Arizona 85253. This information is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified attorney.

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