

GUARDIANSHIP, CONSERVATORSHIP AND ALTERNATIVES



WHEN A CHILD BECOMES AN ADULT

Once your child reaches his/her 18th birthday, he/she becomes an “emancipated person,” an individual free to make choices for himself, regardless of his mental or physical capabilities. Often, parents are encouraged by their school or service providers to seek guardianship of their child with a disability. However, there are many options available that can help parents protect their child and still provide them an appropriate level of independence.

The following are a list of questions that you should consider before your child with a disability reaches the age of 18:

- What are my child’s strengths, abilities and limitations?
- What decisions can my child able to make without assistance?
- With what decisions will my child need assistance?
- Who are the people in my child’s life who will assist them in making decisions throughout their life?
- Will my child require “protection” from legal, financial or other contractual obligations?

Decisions about guardianship or the other alternatives should not be considered based on your child’s medical diagnosis, but rather on the individual strengths and specific needs of your child. If your child only needs assistance with financial issues, then you should consider conservatorship. If your child does require guardianship, the least restrictive option should be considered first.

“Person-centered planning” is a great way to sort out your child’s needs, identify their strengths, and make plans for their future. A group of people who know and care about the person (including and especially the individual with



a disability) should be involved in making the decisions about what kinds of safeguards should be implemented. This process allows for any decisions to be reconsidered later (if needed) and involves the people who know and care about your child the most.

You might also consider community services or advocacy systems to provide the support your child might need to live as independently as possible.

GUARDIANSHIP, CONSERVATORSHIP AND ALTERNATIVE PROTECTIVE ASSIGNMENTS: WHAT ARE THE OPTIONS?

Parents should try to identify the least restrictive option that is appropriate for their child. Options include (from most restrictive to least restrictive):

- **Guardianship:** the legal process of determining a person's capacity to make their own decisions regarding personal affairs (such as where he or she lives or the care he or she requires.) Guardianship is the most restrictive and limiting choice and should only be used as a last resort. "Limited" and "Total" guardianship options are available. Court orders for limited guardianship should restrict only those liberties necessary to protect the well-being of the individual while encouraging the development of maximum self-reliance and independence.
- **Conservatorship:** similar to guardianship, but differs in that it deals only with the financial affairs of an individual. A conservator has no authority to make decisions regarding the individual's personal affairs. Only a guardian has such power. "Limited" and "Total" conservatorship options are also available.
- **Advance Directives:** Legal statements that address specific areas where a child needs support. Some advance directives include: durable power of attorney for health care, durable power of attorney for property and power of attorney for case/care management. Advance directives can also be used to assist the individual in decision-making in education, health care surrogacy, representative or substitute payee, trusts, or joint checking accounts.

HOW DO I KNOW WHICH OPTION TO CHOOSE?

In most states, the legal code is designed to tailor these protective assignments to meet the individual needs of a person, taking care of only those needs a person is not capable of meeting himself. The law recognizes that people who have a disability have abilities in different areas. For example, one person might forget to take medication and need a limited guardian to help with this task, while another person may have trouble balancing his checkbook and need a conservator to help manage his money. You can begin discussing with your family member the issues with which they would like help. A lawyer experienced with transition planning can help guide you in these discussions. Once decisions have been made, a family must go to court to formally enact the protective assignment. When a person has been deemed by a court (adjudicated) to be incapacitated (unable to make decisions affecting



his personal affairs), a guardian is appointed to make decisions for him. It is important to note that when a person is adjudicated to need a guardian, that person loses certain legal rights, which could include the right to vote, enter into contracts, get married, etc.

Persons thinking about obtaining guardianship, conservatorship or implementing other alternative safeguards might contact an attorney or Missouri Protection and Advocacy at 1-800-392-8667 for more information and advice.

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References/Quoted materials:

Assistance to Parents of Children with Disabilities – Missouri Bar Association: mobar.org/.../Family.../ChildrenwithDisabilities.pdf

Illinois Guardianship and Advocacy Commission: gac.state.il.us

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