THE NAUTILUS GROUP®

Guardianship



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Guardianship is a formal legal process through which an individual is appointed by the court to act on behalf of another person who has been deemed legally incapable of managing their personal or financial affairs, either partially or entirely. This legal arrangement is often established for minors who have been orphaned or for adults who have experienced disability, trauma, or cognitive impairment. The appointed individual may serve as a legal guardian, conservator, or tutor, depending on jurisdiction and the scope of authority granted. The person for whom the guardianship is established is referred to as the ward.

A guardianship may encompass responsibilities related to the ward's personal care, estate, property, or a combination of these, based on the nature and degree of the ward's incapacity. The extent of the guardian's authority is determined by the specific needs and limitations of the ward, as assessed by the court.

Once an individual reaches the age of majority, they are legally presumed to possess the capacity to authorize medical treatment and to engage in legally binding transactions such as obtaining housing, employment, clothing, and transportation. However, if an adult lacks such capacity and does not have a legally appointed guardian or designated agent (e.g., through a power of attorney), they may be unable to consent to medical care or enter into necessary contracts, potentially leaving them without critical support or services.

A court-appointed guardian serves as both a legal safeguard and advocate, ensuring the ward's rights and needs are respected, while also providing clarity and legal authority to third parties who interact with the ward.

Upon establishment of a guardianship, the ward forfeits the legal ability to exercise any rights or powers that have been conferred to the guardian. This is a key distinction from powers of attorney, under which the principal retains their legal rights, and the agent is merely authorized to act on the principal's behalf. A durable power of attorney remains in effect even if the principal becomes incapacitated after the document's execution, making it a powerful tool for avoiding the time and cost associated with guardianship proceedings.

Proactively creating legal instruments that address potential incapacity—such as durable powers of attorney for financial and medical decision-making—can help ensure continuity of care and decision-making authority, potentially eliminating the need for a formal guardianship. In cases where guardianship is ultimately necessary, caregivers of individuals with special needs are strongly encouraged to initiate the process well before the individual reaches the age of majority to ensure a seamless transition into adulthood.

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