


HOW TO GET GUARDIANSHIP OF A PARENT

Legal Incapacity



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TODAY'S CONVERSATION




- Provisions in MDPOA documents
- Family discussions about guardianship
- Types of guardianship
- Definitions
 - Interested party
 - Contested guardianship
 - What is legal incapacity?

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MDPOA PROVISIONS



- Estate planning for potential incapacity
- In a MDPOA document, the "principal" can establish an "agent" to have priority for guardianship
- Why all MDPOA documents should have a guardianship provision
- All documents MDPOA and guardianship should also have "successors" listed

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TALKING TO PARENTS ABOUT GUARDIANSHIP



- Do you understand what being a guardian means?
- Reasons to have a guardianship discussion with an elderly parent
- A guardian follows the “known wishes” of a parent prior to incapacity – the guardian cannot follow his or her own preferences
- WHO should your parent appoint?

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TYPES OF GUARDIANSHIP

- Emergency guardianship is granted when substantial harm exists prior to a permanent hearing
- Temporary guardianship
- Limited guardianship
- Unlimited guardianship
- All have limitations for mental health or substance abuse – these can be challenging when dementia or one of these conditions exist



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WHO IS AN INTERESTED PARTY?

- The guardianship process is a full-disclosure process
- Interested parties include:
 - The spouse of your parent
 - Grandparents
 - Adult children
 - Your parent’s physician or care home
 - The person nominated as guardian
 - An agent under medical durable power of attorney



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WHAT IS CONTESTED GUARDIANSHIP?

Contested Guardianships Can Permanently Damage Family Relationships

- All interested parties can “contest” or disagree and present evidence
- A court visitor is appointed - always
- An attorney is appointed for your parent to represent your parent’s wishes – always
- Contested hearings can be financially prohibitive



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LEGAL INCAPACITY

Making Bad Decisions Does Not Always Constitute Legal Incapacity

- Everyone has the right to self-autonomy
- Colorado incapacity statute 15-14-102
 - “Incapacitated person” means an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care even with appropriate and reasonably available technological assistance.

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DEMONSTRATING “INCAPACITY”

Incapacity Must Be Demonstrated for Guardianship to Be Granted

- Medical conditions: Alzheimer’s, dementia, head or brain injuries, other conditions that are related to cognitive impairment: PD, MS, CP
- Self-neglect: bathing, taking medications, etc.
- Concerns with safety: driving, becoming lost, home fires or floods
- Inability to follow through with medical care
- Unpaid bills




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MEDICAL SUBSTANTIATION OF INCAPACITY

Types of Medical Evaluations

- Primary care physician: MMSE, SLUMS etc.
- Geriatrician
- Neurologist: CT scan, MRI, PET scan
- Neuropsychologist evaluation
 - Will a parent attend an evaluation?
 - Legal statute regarding incapacity
 - Cost likely to be out of pocket - not covered by health insurance




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SUMMARY

Designation of Incapacity is a Requirement for Guardianship


- Substantiation of actions and a medical evaluation confirming legal incapacity supports the petition for guardianship
- Is your parent and family in agreement?
 - If not may need a Plan B
- Next up: the steps to create a petition for guardianship



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- Pamela D. Wilson, MS, BS/BA, NCG, CSA
- Website: www.PamelaDWilson.com
- Additional programs and caregiver education are available at: <https://support.pameladwilson.com>

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