

Working with Financial and Legal Advisors:

Guardianships and Involuntary Treatment

This pamphlet is part of a series on dementia-related diseases. This series was prepared by Kenneth Hepburn, Ph.D., Geriatric Research, Education and Clinical Center (GRECC) of the Department of Veterans Affairs Medical Center, Minneapolis, Minnesota.

Over time, people with Alzheimer's disease lose "competence" (The term competence refers here to the power to manage personal, financial or legal affairs.) As this happens, the person will need to have someone else make decisions for him or her. If you care for an impaired person, you may need to take on the role. To make such decisions, legally, you will need to be given the right to act for the impaired person. A lawyer can explain the choices you have for doing this. Your lawyer can also advise you on the best arrangement for your care.

The usual legal tool used to let you make choices for another person is called a "guardianship" or "conservatorship". Generally, a conservatorship is the more limited form of the two. A conservator manages the impaired person's funds only. A guardian manages both personal and financial affairs. In some cases, another choice would be a "durable power of attorney." Note that this is **not** the same as a simple power of attorney. Usually a power of attorney only lasts as long as the person setting it up remains able to understand and agree to the arrangement. With a **durable** power of attorney, a person may assign someone else the power to continue making decisions without that limit.

Not all states permit a "durable power of attorney." Where it is allowed, the durable power of attorney is the simplest option to put in place. Discuss **all** the options carefully with your lawyer before making a choice.

If you need to become a guardian or conservator, you will need to consult a lawyer and work through the court system. A hearing must be held. Facts about the person's medical and mental status will be weighed. Then a judge will decide if the person is legally able to manage property and financial matters. If needed, the judge will appoint a guardian or conservator for the person. This could be you or some other family member--or someone outside your family.

The guardian or conservator's general role is to act in the best interests of the impaired person. He or she regularly reports back to the court. Different states may assign different powers to guardians and conservators. The guardian or conservator may have to "post a bond." This modest fee assures proper handling of the legal and money matters of the impaired person.

Types of guardianships

Different states may use different names for these jobs. Some states use the terms "limited guardian" or "full guardian." This depends on how much the impaired person can care for him or herself.

A "limited guardian"...

is appointed when the court finds the impaired person can still control some aspects of his or her life. The limited guardian is assigned certain duties. The impaired person is in charge of all other legal and money matters.

A "full guardian" ...

is appointed by the court when the impaired person is found to be totally incompetent. A full guardian is in complete charge of all decisions related to the impaired person. These include all money and legal matters as well as matters related to medical care and treatment.

In some states, there is a difference between a "guardian of the person" and a "guardian of the estate." Again, this depends on how competent the impaired person is found to be by the court.

A "guardian of the person"...

is appointed when the impaired person can no longer make decisions about his or her health or other daily life needs.

A "guardian of the estate"...

is appointed when the impaired person can no longer manage his or her money matters. Ask a lawyer which terms apply in your state. Ask, too, which might be best in your case.

Results of being declared incompetent

If a person is declared totally incompetent, major legal rights are lost. Depending on the state's law, an incompetent person may no longer have the right to do some or all of the following:

- Vote
- Enter into contracts
- Marry or divorce
- Buy or sell property
- Write checks

- Operate a motor vehicle
- Provide consent for medical treatment

Duties of a guardian

The guardian's duties will vary, depending on the limits the court may have defined. Duties may include the following: Food, clothing, shelter and health care. Assure that the incompetent person receives needed food, clothing, shelter and health care. Payment for these comes from the incompetent person's estate.

Government benefits/community services

Arrange for the person to receive any government benefits or community services. The guardian should seek out benefits or services to keep the person well.

Rights and best interests

Assure that the rights and best interests of the incompetent person are preserved.

Informed consent

Provide timely "informed consent" for needed medical procedures.

Asset management

Manage the person's money, investments, bills expenses, property and other assets.

Financial protection and accountability

Protect and account for all financial transactions.

Report to the court

Report to the court, as defined by law, an accounting of the finances of the estate.

What a guardian cannot do

The law prevents a guardian from doing some things. As a guardian, you may not usually take the following actions:

- Commit the impaired person against his or her will for mental health treatment or exam. This can only be done if certain steps are followed.
- Consent, for the impaired person, to any treatment such as lobotomy or sterilization that would intrude on the basic rights of the person.
- Dispose of the impaired person's real estate or other property without court approval and/or following certain steps.

Since the law varies from state to state, you should ask your lawyer about this.

Note: If there are reasons for doing so, the court can remove guardians and appoint others instead.

List: What questions do I have about guardianships?

Involuntary treatment

The laws on "involuntary treatment" vary from state to state. For the most part, people who are found to be incompetent can be put in a hospital for examination and treatment even without their consent. If you feel this step is needed for the person in your care, speak to a lawyer to find the best way to proceed. In an "Involuntary Treatment" hearing, the person has legal rights. He or she may need a lawyer.

This step may seem drastic. Still, in some cases involuntary treatment is the only way to get the care a person needs. A suicidal patient, for instance, may refuse all help. The problems of treating the person against his or her will have to be weighed against the risk of a successful suicide attempt.

Deciding to commit someone for involuntary treatment can be emotionally hard. In some cases, though, this may be the only solution. Perhaps, as a caregiver, you have reached the point where you can do no more for the person. Your best efforts may still not be enough to manage. You may not be able to make the impaired person understand the need for treatment. Even his or her doctor may not be able to get the person to agree. In this case involuntary treatment may be the only choice.

List: What questions do I have about involuntary treatment?