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4 Clues That a Loved One May Need a Guardian



When we are young, our parents have the role of taking care of us and giving us direction and advice. As young adults, if we are lucky, we can enjoy a one-on-one adult relationship with our parents. As our parents age, often the caregiving role reverses and the child serves as the person giving the advice. Sometimes it may be difficult for an aging family member to admit he or she needs more assistance or is having issues managing her or her own affairs. This may lead to family members squabbling about how to provide the best care for a declining family member. Unfortunately, even with a proper estate and disability plan, a guardianship proceeding may be unavoidable.

When an individual is unable to care for him or herself, is resistant to or lacks the capacity to engage in planning, and/or fears giving up a sense of control, the situation may call for a guardian to be appointed for the individual. Here are a few common scenarios when you may need to consider initiating a guardianship proceeding:

1. **Refuses or cannot create a disability plan** - If an individual has refused or neglected to sign a Power of Attorney or Health Care Proxy naming an agent to make financial and/or medical decisions for him or her, or if he or she is incapacitated and cannot do so, a guardian may need to be appointed to make medical decisions, pay bills, and/or obtain long-term care benefits for the individual.
2. **The Power of Attorney may be limited** – A Power of Attorney must specifically authorize the agent to perform specific tasks. In order to engage in Medicaid planning, for example, you may need to sell real property, create and fund a trust, or make gifts. When the individual lacks capacity and failed to include needed powers in his or her Power of Attorney, a guardianship proceeding may be the only way to obtain the authority needed to perform the necessary tasks.
3. **Disagreement about plans** - If there are multiple family members who cannot come to an agreement as to how to best take care of an incapacitated person, a guardianship may be the only way to move forward.
4. **Acting in a manner that disregards financial and personal well-being** – When an individual begins making decisions in reckless disregard of his or her own best interests relating to his or her own person or finances, a guardianship proceeding may be necessary to protect such individual from harm.

Initiating a guardianship proceeding is not an easy decision and not one that should be made lightly. If you are considering such a plan for a loved one, it is important to speak with an experienced attorney who can properly advise you about the process. Please feel free to contact our office with any questions you may have regarding guardianships.

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