

Blaugrund, Herbert & Martin I N C O R P O R A T E D

ATTORNEYS AND COUNSELORS AT LAW

Client Advisory

Estate Planning Practice Group

May 1, 2003

Guardianships

By Geoffrey P. Scott, Esq.

When most of us think of guardianships we think of minor children. Children need guardians because the law presumes that persons under the age of 18 lack the legal capacity to enter into contracts, make wills or make other important legal decisions in their life. However, sometimes an adult needs a guardianship when they are having trouble managing their affairs. Adults who suffer from head injuries, strokes, or from the infirmities of old age sometimes cannot manage their affairs or fully appreciate the legal consequences of their actions and may also need a guardianship.

When an adult is in this situation, it creates two important problems. First, the person is vulnerable to the influences of people who may not have their best interests at heart. Second, a person who lacks legal capacity to make decisions about their property is financially paralyzed. A person who lacks legal capacity cannot sign his or her name to a deed to sell their home, may have difficulty withdrawing funds from their bank accounts, or encounter unexpected barriers in everyday transactions.

When a person is vulnerable and financially paralyzed in this manner, the probate court can step in and help such a

person by appointing a guardian. In most cases, a family member steps forward and asks the court to appoint them as a guardian. Once a person has been appointed as a guardian, the court gives them the sole legal authority to act on behalf of the incapacitated person, who is now called the ward. Thus, unscrupulous people cannot take advantage of the ward and the financial paralysis is ended.

There are 2 types of guardianships: the guardianship of the person, and the guardianship of the estate. The guardian of the person makes personal decisions for the ward such as medical decisions. The guardian of the estate controls the checkbook and the other property of the ward. Often, one person will serve in both capacities, but it is not required.

Guardianships not only protect the ward, but they also protect the people who are trying to help by giving them the full blessing of the probate court. Family members who move money around using powers of attorney are frequently sued by disgruntled heirs who are disappointed with their depleted inheritances. A court appointed guardian who follows the directives of the court are effectively insulated from being sued by these disgruntled heirs.