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When Legal Guardianships Make Sense Plus a Few Alternatives to Consider

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A legal guardianship is a court-created relationship where a person takes legal responsibility for the needs of a minor child or incapacitated individuals. These people take over the responsibility for making decisions about healthcare, food, housing, and even social interactions. When a guardianship is in place, they have ultimate authority over decision making in the incapacitated personâ€™s life. While there is court oversight of the process, there is a significant loss in freedom that goes along with it.

There is an obvious need for a minor child to have guidance and supervision who obviously cannot raise themselves. If they are married, most people will designate their spouse to look after their children in the event of their death. However, it is wise to name additional persons, for instance, a parent, brother, sister, uncle or other close family member or friend that you would trust to act should your spouse die before you, or any of those named becomes unsuitable to act as guardian.

These wishes can be established in a will and helps in many ways including:

â€¢ Providing details about the parent's wishes regarding disposition of the estate and assets

â€¢ Name an Executor of the will

â€¢ Avoid potential custody battles by establishing legal responsibilities for the guardian

â€¢ Protect the interests of minor children until they reach the age of majority and can make decisions on their own.

However, if a legal guardianship is not put in place the consequences are more severe when then an incapacitated adult has control over his or her own decisions. This could mean disastrous consequences financially and in terms of healthcare. However, putting such legal measures in place does mean the loss of certain fundamental rights. The right to make decisions contrary to the guardian, for example, is lost immediately. While not every personal right is lost in the process, the fact is many of them are.

There are other less invasive alternatives which can be exercised to protect an incapacitated loved one while still allowing them some freedoms. A conservatorship is similar to a guardianship except a conservator has power to exercise control over the incapacitated personâ€™s estate only. An estate is comprised of all the possessions belonging to the person. A conservator will typically be in charge of managing financial decisions for the estate.

Another option is establishing power of attorney. A power of attorney is a legal document that grants certain power and authority to the person who holds it to act on behalf of another person. A power of attorney can be revoked at will, at any time. On the other hand, unlike with court-appointed guardianships and conservatorships, there is no oversight involved with a power of attorney, making them potentially a greater risk for abuse and misuse.

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If you are considering a legal guardianship for a loved one, or if you have questions regarding the different options available to you, the best step you can take is to contact an attorney. An a estate planning attorney will be able to give you a detailed look at the pros and cons of each choice, allowing you to make the best decision for yourself and your family.

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