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Special Needs Trusts | Elder Law | Long Term Care Planning | Medicaid | Probate | Wills & Trusts
Incapacity Planning | Guardianship | Developmental Disabilities | Veteran's Benefits

GUARDIANSHIP

There are many circumstances where a person may not be able to manage his or her own affairs, whether it be a medical decision, a financial decision or even deciding where to live. A person may have had a stroke and is incapacitated, may have gradually declined due to Alzheimer's disease, or may even be an individual who is subject to a Developmental Disability, and has never been able to manage his or her affairs.

If there are no alternatives, such as Advance Directives, it may become necessary to create a Guardianship for the individual. Advance Directive include: A Durable Power of Attorney, a Healthcare Surrogate or Medical Power of Attorney. A Guardianship is the process by which the Court empowers someone to make decisions for an individual who cannot do so for themselves.

There are several types of Court created Guardianships: Guardian of the Person, Guardian of the Property of an Individual, and Guardian Advocate for a person with a Developmental Disability. All types may be limited in scope or they may be "Plenary" (complete or full empowerment).

The Court determines what civil rights the individual can properly exercise (retained rights), and those that will be delegated to a Guardian or Guardian Advocate.

The Guardian is then empowered to the extent of the authority granted by the Court to manage the affairs of the Incapacitated Individual (the Ward).

The Attorneys at Special Needs Lawyers P.A. are experienced in assisting people in navigating the problems of creating and administering Guardianships of all types.

GUARDIAN ADVOCACY

“GUARDIANSHIP” FOR A PERSON WITH A DEVELOPMENTAL DISABILITY

What is a Guardian Advocate?

A Guardian Advocate is a person appointed by the Court to exercise certain civil rights of a person with a Developmental Disability. It would only be necessary for a person 18 years old or older. For minors, under age 18, parents or legal guardians can generally handle most of the civil rights addressed in a Guardian Advocacy.

What is a Developmental Disability?

A Developmental Disability, according to this area of law, is having a diagnosis of one of the following conditions: intellectual disability (and IQ score of 70 or below), cerebral palsy, autism (not autism spectrum disorder), spina bifida, Down syndrome, Phelan-McDermid or Prader-Willi syndrome; that manifests before the age of 18.

Who is in need of a Guardian Advocate?

Some individuals with a Developmental Disability may be able to manage most of their affairs. Still others may need assistance with some or all of the major decisions in life. These individuals may be vulnerable to abuse or exploitation. They may be unable to handle finances, medical decisions, residency decisions, governmental benefit navigation and other important life decisions. For these individuals, a Guardian Advocate may be appropriate.

Who can be a Guardian Advocate?

An adult over the age of 18 who has not been convicted of a felony can be appointed as a Guardian Advocate. If the proposed Guardian Advocate lives outside of Florida they must be related to the individual needing the Guardian Advocate.

What if the individual with a Developmental Disability has Advance Directives?

If the person with a Developmental Disability has executed an advance directive or durable power of attorney, the court must consider whether the documents will sufficiently address the needs of the person. A Guardian Advocate may not be appointed if the court finds that the advance directive or durable power of attorney provides an adequate alternative to the appointment of a Guardian Advocate. These documents are considered less restrictive alternatives and are preferred to a Guardianship. There may be reasons these documents are not working correctly, so a Guardian may still be appointed even if these documents are in place.

What rights are typically addressed in a Guardian Advocacy?

The Court will address whether the individual should retain the following rights or whether they should be delegated to the Guardian Advocate: Enter into and perform contracts, make medical decisions, apply for governmental benefits, determine residency, determine social environment, handle finances or sue and defend lawsuits. Other rights may also be addressed as needed like the right to travel or certain major medical decisions.