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PARTNER

Shannon Wilson practices primarily in family law, commercial litigation, and healthcare professionals advocacy. Shannon and other attorneys at the Firm work with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of trust and probate disputes.

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GUARDIANSHIP

A guardian is a fiduciary appointed to manage or assist in the management of the estate of a person who is incapacitated or of limited capacity. Sometimes known as a conservator or a guardian of property, a guardian *ad litem* may be appointed by a probate court pursuant to NRS 155.140 to represent the interest of a minor or an incapacitated person if the court determines that representation of the interest would otherwise be inadequate. However, if such a person is the heir or beneficiary of a large estate and there is not already established a power of attorney, trustee, or guardian, then seeking guardianship pursuant to NRS Chapter 159, may be the appropriate action. Guardians are appointed for persons who have:

- physical, cognitive, or other problems that prevent them from receiving and evaluating information or making or com-

municating decisions to such an extent that they are unable "to meet essential requirements for physical health, safety or self-care without appropriate assistance" (NRS 159.019).

- no other person already legally authorized to assume financial responsibilities.
- no other assistance with financial management to protect assets.

Often a friend or family member of the person in need of protection volunteers to watch over the person and the financial estate. The person seeking the appointment files a petition with the guardianship court. A physician certificate is required to establish the limited capacity or incapacity of the proposed protected person. Once the court agrees that the protected person is indeed unable to manage the estate, the judge will issue the guardian legal documents that authorize him or her to act on behalf of the protected person. In a sense, the appointment of a guardian is like power of attorney after a person has lost the ability to create such a document.

A guardian can receive compensation for managing the affairs of the estate, often on an hourly basis, from the estate's assets. He or she





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must be a competent adult who is interested and involved in the protected person's estate. The duties of a guardian include:

1 Taking inventory of the protected person's assets. The guardian must provide the court with exhaustive records and summaries of properties, bank accounts, retirement accounts, insurance benefits, etc. He or she is also responsible for keeping records of any and all transactions pertaining to those assets.

2 Handling banking matters. The guardian opens, closes, and consolidates the protected person's bank accounts as directed by the Court. If the guardian will be paying money on the protected person's behalf, a special checking account must be opened

that includes the protected person and guardian's names and titles.

3 Permit the incapacitated person to participate as much as possible. The protected person may even be appointed their own counsel.

4 Ensure that debts are properly paid. Any outstanding debt should be covered with the protected person's assets as soon as possible.

5 Seek court approval for actions that would alter the status quo for the protected person or their estate.

Guardianship ends as soon as the protected person dies or recovers. The best ways to avoid a guardianship are preparing a power of attorney document and quality estate planning. ■

Hutchison & Steffen's attorneys aggressively represent clients in a wide range of trust and probate litigation before probate, district, and federal courts in trial and on appeal. The Firm has successfully resolved disputes both in and out of court, and is experienced in litigating and resolving issues regarding transfers of assets from a deceased's estate. Cases run the full spectrum from million-dollar will contests to smaller family disputes.



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