

## GUARDIANSHIP

John T. Steffen practices primarily in the areas of trust and probate litigation, business and commercial litigation, landlord/tenant law, personal injury, and medical malpractice. John and other attorneys at the Firm work closely with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of disputes. John may be reached at 702.385.2500 or [jsteffen@hutchlegal.com](mailto:jsteffen@hutchlegal.com).

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A guardian in a probate matters is a fiduciary figure responsible for the estate of an incapacitated individual. Also known as a conservator or a guardian of property, a guardian is appointed by a probate court to care for the assets of another person. A guardian is only needed and appointed if the owner of the assets, known as the ward, hasn't established power of attorney in advance. Guardians are appointed for persons who have

- physical or mental problems that prevent them from managing financial affairs.
- 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 incapacitated ward volunteers to watch over the financial estate. The person seeking the appointment files a petition with a probate court. The would-be guardian typically includes medical records or sworn statements from medical authorities to prove the person's incapacity. Once the court agrees that the ward 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 legally incapacitated 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 will receive compensation for managing the affairs of the estate, often on an hourly basis, from the estate's assets. He or she must be a competent adult who is interested and involved in the ward's estate. The duties of a guardian include:

1 Taking inventory of the ward'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 ward's bank accounts

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as needed. If the guardian will be paying money on the ward's behalf, a special checking account must be opened that includes the ward and guardian's names and titles.

**3** Permit the incapacitated person to participate as much as possible. If the ward isn't entirely disabled, the guardian must at least research what the ward's opinion on the matter might be.

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

The court must approve major actions of the guardian, such as selling of property or renting out a home. This

protects the incapacitated person from any abusive or self-gratifying actions that a guardian might take.

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

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