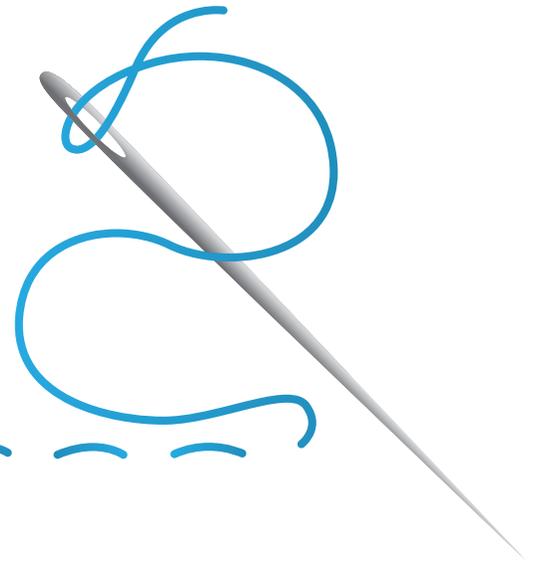


Chapter 5

ALTERNATIVES TO GUARDIANSHIP



Alternatives to Guardianship

If your child will be turning 18 – the age of majority – in a few months, you may need to consider how you might support the decisions your son or daughter has to make as an adult. The freedom to make decisions plays an important role in defining all of us as human beings and Americans, and determining our quality of life. Some young adults will do a great job advocating for themselves, while others may need your involvement. If your 18 year old cannot make decisions because of their disability, a court can remove their rights to make their own decisions and appoint someone else to make decisions for them. This is called guardianship. Guardians have the power to make decisions about where a person will live, work, spend their money, go, and dress. Removing a person's rights makes them more vulnerable, not less.

Guardianship should be an option of last resort and should be entered into only if it is determined that the individual has difficulty making appropriate decisions and does not have supports in place to manage his financial affairs, safety, and welfare. It is important to look at alternatives to guardianship that will put you in the role of a supported decision-maker with your young adult as he makes choices and lives a life that meets his needs. Different individuals have different situations, needs and available supports. Deciding what alternatives or guardianship options will work best in your child's unique circumstances can be complex and difficult. A good tool for you, your child, and his planning team to use to determine his level of ability with regard to key areas of his life and appropriate alternatives that meet his needs for support can be found on the Missouri Developmental Disability Resource Center website (www.moddrc.org). The questions on the tool are not intended to provide a final determination of what a person should, or should not, do in their unique circumstances, but rather a place to start the discussion. Below are some brief explanations of some common alternatives to guardianship.

Guardianship is a Last Resort

Since guardianship involves the loss of fundamental rights, it should be considered only when a person:

- Cannot make informed decisions on their own
- OR
- Cannot make informed decisions with accommodations or supports

HOW DO I KNOW IF MY CHILD NEEDS A GUARDIAN?

Here are just a few questions to think about when identifying a person's ability to make decisions and manage key areas of their life.

- Can the person look for and find a job?
- Is the person able to manage their money?
- Does the person make decisions about where, when and what to eat?
- Can the person take medications as directed?
- Is the person able to recognize when someone is taking advantage of them, hurting them or abusing them and protect themselves?
- Is the person able to make appropriate decisions concerning marriage and intimate relationships?
- Is the person able to be on their own without risk of serious harm or injury to themselves?
- Does the person understand what is involved with managing a home?
- Is the person able to understand and communicate consent and/or permissions regarding legal documents or services?
- Does the person demonstrate the ability to vote?
- Is the person able to decide and direct what kinds of assistance or support they need or want and select who provides those supports?
- Is the person able to communicate approval to share information with parents, family members and friends who are not legal guardians?

More About Alternatives to Guardianship

CONSENT FOR RELEASE OF INFORMATION

By signing a Consent for Release of Information Form, your adult child can now empower a family member or friend to participate in school meetings or other planning meetings, have access to records, and closely carry out his wishes. Most schools and agencies have their own consent forms.

REPRESENTATIVE PAYEE OR AUTHORIZED REPRESENTATIVE FOR SSI

The Social Security Administration has special paperwork and procedures for appointing a representative payee. Generally, a family member or friend may request and be appointed by Social Security to receive and manage your young adult's SSI benefits. The payee must follow strict rules to take care of the money.

POWER OF ATTORNEY

A Power of Attorney is a written document that can be limited, meaning your young adult gives permission to someone to act only with regard to a very specific matter like medical care. A Power of Attorney can also be general, meaning your young adult gives permission for someone to act of a wide variety of decisions (health, money, etc.). A Power of Attorney is only valid if the person signing understands the nature and importance of the document. A Power of Attorney can be revoked or modified at any time as long as the individual is determined competent.

Everyone is Presumed Competent to Make Choices About Their Lives.

Having a disability is not a reason to assume a person cannot make decisions. Sometimes, because of limited intellectual or communication skills, a person may simply need some help with making decisions.

More About Alternatives to Guardianship

CONSERVATORS

A conservatorship is a legal right given to a person to protect and manage the personal care or the assets and finances of a person deemed fully or partially incapable of handling these for himself. There are many circumstances where a person is still able to live an independent life, but may require help with his assets due to disability.

LIMITED OR JOINT BANK ACCOUNTS

Most banks can help you set up limited or joint bank accounts to help ease concerns about money management. Some additional features may include pre-set limit debit/credit cards or dual signatures on checks.

MICROBOARD

A microboard is a small group of committed family members and friends who join with your adult child to form a circle of support and create a non-profit corporation. Since the microboard is a legal entity, its purpose is to ensure that your adult child's circle of friends will endure. The microboard provides support to and decision-making assistance with your adult child, and ensures that he has opportunities to participate in the community in as many ways as possible. In addition, microboards make sure the supports and services your adult child receives are individualized to meet his needs. For more information on microboards, visit http://www.communityopportunities.org/index_files/Page383.htm.

Don't Be Afraid to Get Legal Advice.

It is important to note that some of the alternatives to guardianship may provide less protection for your young adult, so it is always best to speak with an attorney. Your State Bar Association (1-804-775-0500), Legal Aid (1-866-534-5243), or the Virginia Office for Protection and Advocacy (1-800-552-3962) is a good place to start when looking for legal advice.

