

Guardianship: Pros and Cons

by Eileen Beal

Family members often understand the need to talk about planning for the future with older loved ones. But many times, these important discussions don't take place until there is a crisis.

"Too often that's when the loved one – for whatever reason – is no longer able to communicate his or her wishes," cautions Bert Rahl, director of Mental Health Services at Benjamin Rose Institute, a nonprofit social service agency serving older adults.

One of the most important discussions to have is deciding who would become responsible for (as they say in legalese) "care of person" and "care of estate" if an older adult becomes so physically incapacitated that he or she can't carry out the activities of daily living needed to take care of his or her own physical needs. Or an older adult becomes so cognitively impaired he or she can't manage finances and other resources. Or he or she becomes so impaired that cooking or driving makes him or her a danger to self and others.

Sources and Resources

Adult Guardianship Services (Cuyahoga County) www.agscleveland.org

AARP Report: "Power of Attorney Abuse: What States Can do About It"
www.aarp.org/research/legal/legalrights/2008_17_poa.html

Caring for the Parents Who Cared for You, Kenneth P. Schileppi, MD

How to Care for Aging Parents, Virginia Morris

Pro Seniors (consumer pamphlets)
www.proseniors.org/pamphlets.html

What is a Guardian?
www.ohiojudges.org/cms/tools/act_Download.cfm?FileID=239&/guardianship.pdf

When those things happen, caregiving may mean becoming a loved one's legal guardian. "That is not only a difficult decision to make; it also isn't an easy solution

to providing the care the person needs. [Guardianship] doesn't, for instance, restore cognition to a demented person," says Beth Reid, manager of client services for Adult Guardianship Services, a county-funded program.

Less Restrictive Alternatives

"Guardianship legally strips a person of all their individual rights... That's why efforts to find alternatives should be exhausted," says Sarah Parran, former director of social work at University Hospitals and current head of Senior Care Connections, a private agency coordinating care for older adults.

Alternatives include use of supportive services to help with daily living activities; different living arrangements to address safety, health and socialization needs; use of a representative payee or conservator to handle financial affairs; and having a lawyer draw up a durable power of attorney (POA). This legal document allows a designated person to act on another's behalf when he or she is no longer able to do so.

POAs are easy to obtain, but they are a double-edged solution. Cautions Parran, "They confer a great deal of authority without regular oversight or clear standards for the conduct of the person given the POA... And no one is looking over the shoulder of the person granted the POA so they can act with impunity and do anything they want."

Indeed, notes a recent AARP report, adult protective services and criminal justice professionals are reporting an explosion of financial exploitation cases where exploiters – often family members – use POAs.

Seeking Guardianship

When family members seek guardianship, it's emotionally painful.

"It's hard to essentially turn a person you care about into a 'ward' with no rights," explains Rahl.

And it's complicated, so you may want to hire a lawyer. But you don't need to because there are many court-approved agencies that can guide you through the process. For example, Adult Guardianship Services (216.696.1132) provides help to Cuyahoga County residents and Volunteer Guardianship Services of Geauga County (440.285.3537) provides it to Geauga County residents.

Most guardianship applications follow the following steps:

Step 1

A "statement of expert evaluation" – a cognitive evaluation report from a physician or psychiatrist – is presented to the probate court by the person or agent seeking guardianship. Other documents, supporting claims of physical and/or financial incompetence or abuse or exploitation are also often presented. At the time evidence and

support documents are presented, the person seeking guardianship files a guardianship application fee in probate court. Fees range from \$111 (Cuyahoga County) to \$175 (surrounding counties).

Step 2

A hearing date is set. The potential ward and next of kin are notified of guardianship application. Then the court sends a special investigator to interview the potential ward, the person/agency seeking guardianship, and other people involved with or impacted by the application. The investigator writes a report and submits it to the court, where it, too, becomes “expert evidence.”

Step 3

A hearing takes place before the probate judge. If the guardianship is uncontested, it’s granted “from the bench.” If it is contested – often the case if significant assets are involved or several people are seeking guardian-ship – a second hearing is scheduled at which additional statements, information and evidence are presented.

Step 4

After the second hearing, the judge writes a “findings report,” based on the information and evidence presented, and awards guardianship to the most appropriate

applicant. Or the person is not found incompetent and guardianship is not awarded.

“Most often,” says Reid, “judges award guardianships to family members, attorneys, and [in Cuyahoga County] to Adult Guardianship Services.” (Currently AGS is coordinating 520 guardianship cases.)

Guardianship makes “care of person” and “care of estate” easier for the guardian, but, say both Rahl and Parran, it doesn’t necessarily solve the family issues that may have triggered the need to seek guardianship in the first place. Still, adds Parran, “It does take some of the family conflict-dynamic out of the care and that’s good for the [older] person because they aren’t caught in the middle anymore.”

Eileen Beal, MA, is a health care writer specializing in issues related to aging and caregiving. This Successful Aging column sponsored by the Benjamin Rose Institute was published in the Sun Newspapers in February 2009.