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Sunday, August 9th at 1:30pm



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Raffle tickets sold separately
 100% of the proceeds go to the
 Bristol County Lions Club

AGING WISELY

Navigating guardianship and conservatorship

Every adult is assumed to be capable of making his or her own decisions unless a court determines otherwise. If an adult becomes incapable of making responsible decisions due to a mental disability, the court will appoint a substitute decision maker, often called a “guardian.” Guardianship is a legal relationship between a competent adult (the “guardian”) and a person who because of incapacity is no longer able to take care of his or her own affairs (the “ward”). The guardian can be authorized to make legal, financial, and personal decisions such as health care and residential decisions.



Macrina HJERPE

Some incapacitated individuals can make responsible decisions in some areas of their lives but not others. In such cases, the court may give the guardian decision making power over only those areas in which the incapacitated person is unable to make responsible decisions (a so-called “limited guardianship”). In other words, the guardian may exercise only those rights that have been removed from the ward and delegated to the guardian.

Generally a person is judged to be in need of guardianship when he or she shows a lack of capacity to make responsible decisions. A person cannot be declared incompetent simply because he or she makes irresponsible or foolish decisions, but only if the person is shown to lack the capacity to make sound decisions. For example, a person may not be declared incompetent simply because he

spends money in ways that seem odd to someone else. Also, a developmental disability or mental illness is not, by itself, enough to declare a person incompetent.

Process

In Rhode Island, anyone interested in the proposed ward’s well-being can request a guardianship. An attorney is usually retained to file a petition for a hearing in the probate court in the proposed ward’s county of residence. The proposed ward and the ward’s “heirs at law” or close family members must receive notice of the initiation of the guardianship proceedings and can have the opportunity to object to the guardianship or the proposed guardian. The ward is entitled to legal representation at the hearing. The court will appoint an attorney if the allegedly incapacitated person cannot afford a lawyer.

At the hearing, the court attempts to determine if the proposed ward is incapacitated and, if so, to what extent the individual requires assistance. If the court determines that the proposed ward is indeed incapacitated, often through medical reports from doctors, the court then decides if the person seeking the role of guardian will be a responsible guardian. As part of the process, the court obtains a criminal background check on the proposed guardian.

A guardian can be any competent adult: the ward’s spouse, another family member, a friend, a neighbor, or a professional guardian (an unrelated person who has received special training). A competent individual may select a proposed guardian in a durable power of attorney in case one is needed in the future.

When naming a guardian,

courts give first consideration to those who play a significant role in the ward’s life—people who are both aware of and sensitive to the ward’s needs and preferences. If two individuals wish to share guardianship duties, courts can name co-guardians.

Reporting Requirements

A guardianship is a significant deprivation of a person’s personal liberty. Guardians may decide how money is spent or managed, where the ward will live, what medical care he or she will receive and with whom the ward may associate. For this reason, the courts take the guardianship process very seriously. Guardians are expected to always act in the best interests of the ward, but given the guardian’s often broad authority, there is the potential for abuse. For this reason, courts hold guardians strictly accountable for their actions.

The guardian of a ward’s financial estate is required to inventory the ward’s property, invest the ward’s funds, and file an annual detailed accounting and status report describing the ward’s present situation with the court. A guardian of the property also must obtain court approval for certain financial transactions, such as the sale of a home. Guardians must offer proof that they made adequate residential arrangements for the ward, that they provided sufficient health care and treatment services, and that they made available educational and training programs, as needed. Guardians who cannot prove that they have adequately cared for the ward may be removed and replaced by another guardian.

Alternatives to Guardianship

Because guardianship involves a profound loss of freedom, Rhode Island law requires that guardianship be imposed only when less restrictive alternatives have been tried and proven to be ineffective. Less restrictive alternatives that should be considered before pursuing guardianship include a power of attorney, a representative or protective payee to manage certain government benefits, and a revocable trust to hold the person’s assets with a trusted individual serving as trustee.

Guardianships can be time-consuming and costly. For better or worse, the court-appointed guardian may not be the individual the ward would have chosen. Legal fees can escalate if a guardianship is contested by family members. For these reasons, I tell my clients that while they are alive, the power of attorney is one of the most important documents for them to execute.

Attorney Macrina G. Hjerpe is a partner in the Providence law firm Chace Ruttenberg & Freedman. She practices in the areas of Estate Planning, Probate, Estate Administration, Trust Administration, Trust Litigation, Guardianship, Business Succession Planning, Asset Protection Planning, Elder Law and Estate Litigation.

Incapacity


Generally a person is judged to be in need of guardianship when he or she shows a lack of capacity to make responsible decisions. A person cannot be declared incompetent simply because he or she makes irresponsible or foolish decisions, but only if the person is shown to lack the capacity to make sound decisions. For example, a person may not be declared incompetent simply because he



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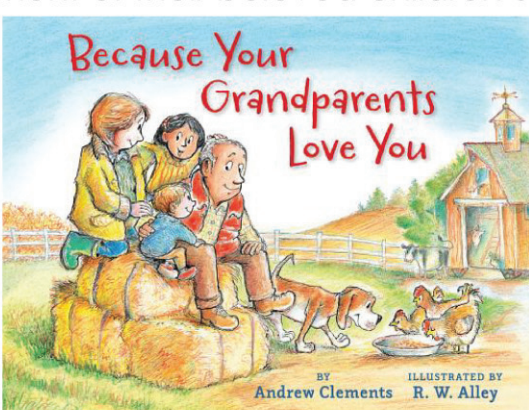
A NIGHT OF Jazz
 featuring
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THIS THURSDAY
July 30th at 6:00pm



ANDREW CLEMENTS
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