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Adult Guardianship Over Incapacitated Persons in New Mexico

Unfortunately, there comes a time in the lives of many adults when they are impaired to the point where they can no longer make decisions for themselves. This impairment can be the result of mental illness, physical disability or drug and alcohol abuse. In such situations, the New Mexico Probate Code Adult Guardianship provisions allows for the appointment of a guardian and/or a conservator to make important decisions for the impaired person. A guardian makes personal and health care decisions for the impaired person, which a conservator makes decisions related to the financial affairs and property of the impaired person.

Any person over the age of eighteen, or properly registered corporation, may serve as a guardian or conservator and the same person or entity does not have to serve as both guardian and conservator. For instance, often the spouse of an incapacitated person will be appointed as their guardian, but a bank will be appointed as conservator. Every guardian and conservator must be appointed to serve by the District Court.

While any party interested in the estate, affairs or welfare of an incapacitated person may file a petition to be appointed as guardian or conservator, the process is very complicated. The courts take these appointments very seriously because by appointing a guardian or conservator, the court is essentially taking away the fundamental right of the impaired person to make decisions for themselves. The incapacitated person and certain family members must be given notice of the appointment proceeding and the court will appoint a guardian ad litem to represent and protect the incapacitated person.

The court will also appoint a court visitor, which is usually a health care professional or social worker, and a qualified health care professional to evaluate whether or not the person is actually incapacitated to the extent that a guardian or conservator is necessary.

To further complicate things, a guardian or conservator can also be given limited guardianship authority, if the court believes that the person is only partially incapacitated and is still capable of making some decisions for his or herself. Given the wide variety of issues involved in the appointment of a guardian or conservator, it is a good idea to consult an attorney about the process if you believe that family member or loved one is in need of such supervision.

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