

Marietta Georgia Estate Planning Lawyer Reveals: Legal Guardianship – It's Not Just For Kids

I find as a Marietta estate planning lawyer that when we think of guardianship, most of us think of who to name as legal guardians for our children. You know, just in case.

It's hard to imagine Mom or Dad needing a legal guardian.

Something about that concept just doesn't fit into what most of us see as the natural order of life.

Mom and Dad have always been there to take care of us. Why would either of *them* ever need a legal guardian?

As our population ages and we live longer than ever before in history, our parents needing a legal guardian is a harsh reality that many of us will eventually face.

As the body ages, the mind also loses its ability to function clearly. For that reason, laws have been established to allow incapacitated people to have guardians appointed to help them with making decisions and taking care of their affairs.

Here are a few things you need to know about the guardianship process:

First, let's determine what an "incapacitated person" is.

This simply means an adult whose ability to receive and evaluate information effectively and communicate decisions is impaired to the degree that this person is unable to manage his or her financial resources, or meet essential requirements for his or her own personal safety and health. This definition is sort of a "catch all". Each state has its own criteria for deciding if a person is incapacitated, so call us to find out what the requirements are in Georgia.

Second, recognize that having guardianship established for an adult is not an easy thing to do. You can't simply fill out a form and be appointed. A petition has to be filed with the probate court. Unless you're very well versed in dealing with the ins and outs of the legal system, you will definitely need a Georgia probate and adult guardianship attorney to prepare the petition and shepherd it through the process.

Third, there are different types of guardianship. You can be named guardian of a person or of an estate. You can even apply for a limited guardianship to handle only certain aspects of the person's affairs.

Regardless of the type of guardianship applied for, the court will consider several issues in granting or denying guardianship:

- The nature of the condition or disability affecting your loved one;
- The ability or inability of your loved one to make and communicate decisions;
- Whether your loved one really needs a guardian and the availability of family, friends or other support systems to help them in making decisions;
- Whether or not your loved one has a Durable Power of Attorney or a trust established that sets forth decisionmaking powers in these instances;
- The type of guardian your loved one actually needs based on their current condition;
- How long the guardianship is anticipated to last.

Rest assured that the probate court in Georgia will not simply take your word for it that Mom or Dad needs a guardian. Extensive *legally sufficient* proof will be required. You will more than likely need legal assistance to make sure that you are meeting the court's requirements. Give us a call to talk about what you will actually need to do to provide the kind of proof the court needs.

Finally, a good Power of Attorney may very well eliminate the need for a guardianship. It's much easier to prepare a Power of Attorney while your loved one is still competent than to wait and be forced to have a loved one declared incompetent for their own protection.

Are you beginning to worry that Mom or Dad may not be able to make sound decisions?

Would you like more information on exactly what the requirements for incapacity are in the State of Georgia?

Call us to schedule your Peace of Mind Planning Session today. We can identify what needs to be done to ensure whether your parents have the right plan in place, or help you plan your own estate to save your loved ones from the hassle of dealing with a competency finding in a Georgia Probate Court when you can no longer take care of your own affairs. Our Peace of Mind Planning Session is normally \$750, but this month I've made space for the next two people who mention this article to have a complete planning session with me at no charge. Call us, your Marietta GA and Atlanta Georgia area estate planning attorneys, today at 770-425-6060 and mention this article.