

GUARDIANSHIP vs. POWER OF ATTORNEY: WHICH ONE IS RIGHT FOR MY LOVED ONE?



HPF Hinkle Prior & Fischer
Attorneys at Law

Representing people with disabilities and their families since 1974

WHAT IS GUARDIANSHIP?

- Guardianship is a protective mechanism allowing one individual to make decisions for another individual, when the individual cannot make decisions for him/herself



GUARDIANSHIP FOR ADULTS WITH DEVELOPMENTAL DISABILITIES



- Many adults with developmental disabilities are able to make decisions for themselves; in these cases guardianship is not appropriate
- Guardianship should be considered for an individual with a developmental disability who cannot make decisions for him/herself
- The legal standard is “being unable to govern and manage one’s own affairs”

WHO SHOULD SERVE AS GUARDIAN?

- Typically, both parents seek to serve as co-guardians
- As parents age, siblings are sometimes added as co-guardians
- A guardian should:
 - Have an interest in the individual with a disability
 - Be willing to learn about the individual's needs
 - It is helpful if the individual lives close to the "ward"



WHEN SHOULD YOU START THE GUARDIANSHIP PROCESS?



- At age 18 the law considers a child emancipated
- Even the parents of a child with a severe disability are not automatically the guardians of their child
- Only a judge can appoint a guardian for a person over the age of 18
- Parents should start the process when their child is about 17 ½ years old

WHAT IS THE GUARDIANSHIP PROCESS

- An application needs to be submitted to the court
- The application includes:
 - A verified complaint
 - Two doctor certifications
 - Affidavit of assets
- Parents should meet with an attorney who will draft the necessary documents and comply with all court rules



IMPORTANT TIMING RULES



- The application cannot be submitted to the court before the individual's 18 birthday
- The court requires two doctors or one doctor and one psychologist to examine the individual within 30 days of the application being submitted to the court
 - Example, if the first doctor examination is in June 1 – all of the documents must be submitted to the court before June 30

Possible Changes For The Person's With Developmental Disabilities

- Doctor Certification – 6 months

-OR-

- Use of an IEP
 - Less than 2 years old
 - Might not be as easy as it sounds
- Has to be client of DDD



AFTER THE APPLICATION IS SUBMITTED TO THE COURT



- The court will set a hearing date
- Appoint an attorney for the individual with a disability
- The Court Appointed Attorney will arrange to meet with the individual and proposed guardians and submit a report to the court
- Parents are responsible for the Court Appointed Attorney fees

APPOINTMENT OF GUARDIANS

- The Judge will review all of the information submitted to the court and determine whether the individual needs a guardian
- It is up to the judge whether the hearing is necessary
- If the judge determines that a hearing is not necessary, the judge will sign the order
- The guardians will need to qualify



GUARDIANS ARE RESPONSIBLE TO

- Make decisions for the individual under guardianship
- These decisions are of a legal, medical and financial nature
- All decisions must be made in the best interest of the individual under guardianship
- Guardians are to encourage the individual to be as independent as possible

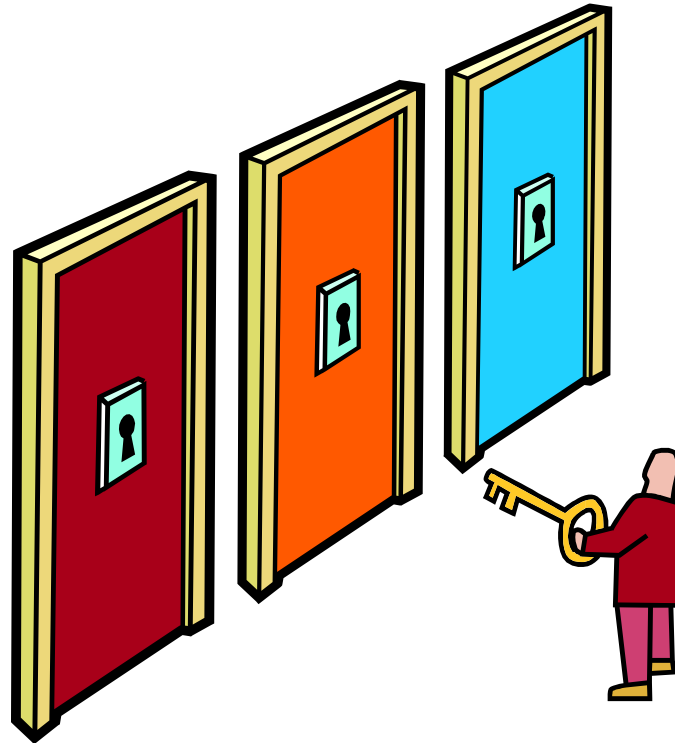
NAMING A SUCCESSOR GUARDIAN



- Parents should name a successor guardian in their wills
- The person named will need to be approved by the court before being authorized to act as guardian
- As parents age, petitioning the court to add a co-guardian should be considered

ALTERNATIVES TO PLENARY GUARDIANSHIP

- Limited guardianship
- Conservatorship
- Power of Attorney



Conservatorship

- How is it different from guardianship?
- When is it appropriate?



Durable Power of Attorney

- Allows an individual to name another person to handle his or her affairs
- What is the difference between a DPA and guardianship?
- When is this an appropriate option?



Questions?



- **Free Articles**
- **Free Videos**
- **Free Workshops**
- **Free Speaking Event**
- **Locations throughout New Jersey**

www.hinkle1.com

609-896-4200

