Guardianship is considered a drastic measure in many cases. When a guardian is appointed for a minor, the process is serious because it's important to choose the right guardian, but the need for guardianship itself is usually not questioned. A child needs someone who can legally act on their behalf, and when they reach the age of majority, they outgrow the need for a guardian.

The situation is much different when someone seeks guardianship for an adult who has become incapacitated. You need to prove to the court that the adult is unable to make their own responsible decisions, and that often takes a lot of time, effort, and expense. That is why estate planning attorneys encourage families to put measures into place in advance to avoid the potential need for guardianship in the future.

One option is the creation of a revocable "living" trust. However, this document by itself does not cover the full range of potential needs.

Guardianship of the Estate vs. Guardianship of the Person

Texas law provides for two types of guardianship. A guardian of the estate manages an individual's assets and financial affairs. A guardian of the person makes decisions regarding the personal care of an individual. Many alternatives to guardianship can help avoid the need for guardianship of the estate. These strategies enable a trustee or other competent person to make financial decisions and manage property for someone who needs assistance.

However, these financial tools do not generally provide authority to make decisions about health care. Another document, such as a medical power of attorney, should be executed to enable a trusted family member or friend to make health care decisions on behalf of an individual when that individual is incapacitated and unable to make or communicate decisions on their own.

Operation of a Living Trust to Avoid Guardianship of the Estate

Many people set up revocable living trusts to avoid probate, but this and other types of trusts can also be used to bypass the need for guardianship of the estate. With a revocable living trust, the person creating the trust usually serves as the trustee as well as the beneficiary so they use their property just as they did before it was transferred into the trust.

However, they also designate an alternate trustee to serve when they pass away or otherwise lose the capacity to serve in the role. The trust provisions can be written so that the alternate trustee gains authority to act on behalf of the trust if the original trustee becomes incompetent. Assuming the trust has been properly funded, then the alternate trustee steps in to manage the individual's affairs, and it is not necessary to seek the appointment of a guardian.

Talk to the Nordhaus Firm to Find Out How a Revocable Trust Could Benefit Your Family

Bypassing guardianship and avoiding probate are both very desirable results that can be achieved with a revocable living trust. For that reason, estate planning attorneys recommend this type of trust for a number of clients.

We'd be happy to review the pros and cons of revocable trusts and help you determine whether it is the right tool to help you reach your goals. Just contact us at your convenience.