Many people have no idea how guardianship works when an adult is involved. Others understand the concept but are not aware of the difficulties in obtaining guardianship or the potential for abuse that comes along with it. For a variety of reasons, adult guardianship is a measure to be avoided if possible and only used as a last resort.

Of course, when there are no other options available, guardianship can fulfill an essential role. But with advance planning, other options can make guardianship unnecessary.

How Guardianship and Conservatorship Work

A guardian or conservator has authority over aspects of another person's life. In some states, guardians control an individual's living situation while conservators control their finances. In Texas, however, conservatorship is used exclusively for minors while guardianship is used for adults and children. Guardianship of the person refers to physical well-being and residency while guardianship of the estate covers financial matters. Texas allows for limited guardianship as well as full guardianship.

Parents are the natural conservators of their children, and when courts get involved in a custody matter, they will name parents or someone else to serve as sole or joint conservator. This is essential because children lack the capacity to manage their own interests.

When a guardian is appointed for an adult, however, the situation is different.

Problems with Guardianship

When a court appoints a guardian for an adult ward, the ward loses the right to make many decisions about their own life. They can be treated like a child. This creates the potential for abuse, particularly regarding finances. An unscrupulous guardian of the estate can take the resources of the ward and use them for their own benefit. Often the ward is not aware that this abuse is occurring until it is too late and their resources are depleted.

Another problem with guardianship is that because it is considered an extreme measure and because of the potential for abuse, courts are reluctant to grant guardianship without a lengthy and expensive legal process. If your loved one needs assistance right away, it can take a long time to get the authority to provide that assistance if guardianship is your only option.

Avoiding the Need for Guardianship

With advance preparation, you can avoid the need to appoint a guardian for an adult. One option is to create a power of attorney to enable a trusted agent to assist with financial management. The power can take effect immediately or be set up so that it only takes effect if an event occurs, such as if the adult is declared mentally incompetent by their doctor.

Another option is to transfer property into a trust of some type. For instance, with a revocable living trust, the trust agreement could specify that an alternate trustee can step in to act for the trust creator if the creator becomes incapacitated.

Plan Ahead to Avoid Guardianship

Planning before the need arises can protect your family from difficulty and heartache. To protect potentially vulnerable loved ones, talk with The Nordhaus Firm about your options to avoid the need for guardianship in the future.