

What is the Best Alternative to Guardianship?

When an adult is legally incompetent and not able to manage their own financial matters or personal care, family members often feel they have no choice but to initiate guardianship proceedings so that they can provide assistance. However, guardianship strips an individual of their rights, and therefore courts consider it a drastic measure. Before courts will grant guardianship, it is usually necessary to demonstrate that there are no less restrictive means available to provide assistance. They want families to exhaust the alternatives first.

So what are those alternatives? And which one is the best? The answers depend on the situation.

Planning in Advance

The best alternatives to guardianship involve making preparations while you are still legally competent. If your memory fails to the point where a doctor would consider you unable to understand documents that you are reviewing and signing, then it is too late to protect yourself with the best alternatives to guardianship. Or if an accident or illness renders you unconscious, it is not possible to create any new documents at all.

So to enable your loved ones to assist you in an emergency, it is best to prepare and have documents ready long before you anticipate needing them. An emergency can strike at any time of life and your family might be unable to pay your bills or authorize medical treatment if you don't have documents prepared in advance.

Powers of Attorney

For many people, the best alternative to guardianship would be powers of attorney. When you execute one of these documents, you authorize someone to make decisions

on your behalf. You do not lose any of your own authority to direct your own actions—unlike guardianship—but you allow your designated agent to make decisions as well.

The power can be set up so that it only takes effect if a doctor considers you to be legally incapacitated. You can choose any adult you want to serve as your agent. They don't need to be an attorney or have special training.

Texas law recognizes two types of power of attorney.

Medical Power of Attorney

A medical power of attorney gives your agent the authority to make health care decisions for you if you cannot make or communicate your own preferences. This is a type of advance directive for health care. It is important to ensure that your agent understands your preferences for care in different situations. You can execute a living will telling doctors the treatment you would or would not want in an end-of-life situation, but when your agent for your medical power of attorney knows your choices, that provides additional insurance that your wishes will be abided by.

Durable Financial Power of Attorney

A financial power of attorney gives your agent the authority to handle your financial matters. You can draw up the powers to be very broad or quite specific. You might give your agent access to all accounts, for instance, or you might specify that they can access one or two accounts to pay bills as necessary.

When you give someone financial power of attorney, they can control your property

but they do not gain an ownership interest in your property like they would if you added their name to your bank account. This means that the creditors of your agent cannot go after your property, so it is a much safer option than adding a family member's name to your accounts.

Other Options

Sometimes, it is too late to execute a power of attorney. In that case, there may be other alternatives to avoid guardianship. For financial matters, you might be able to designate a representative payee to manage funds from Social Security or other sources. It might also be possible to set up a trust to provide for the financial needs of an individual who cannot manage their own finances.

For personal care matters, it may be possible to implement a supported decision-making plan or engage personal care services. It may also be possible to obtain a limited guardianship that still allows the person requiring assistance to manage some of their own affairs.

The Nordhaus Firm Can Help with Guardianship as Well as Alternatives

Planning for incapacity is a cheerless task, but failure to plan can have much more painful consequences. If you would like to create a power of attorney, trust, or other plan to avoid the need for guardianship, or if you need assistance providing care for a loved one, the compassionate team at The Nordhaus Firm is ready to assist. Call us at 214-726-1450 or contact us online to schedule a free consultation.