If you are caring for an adult who is struggling with memory or has trouble managing their finances, you are probably worried about what could happen to them if they don't get the right kind of help. Vulnerable adults can be preyed on and taken advantage of by strangers and even by people they know and trust. They can also make very costly mistakes, such as forgetting to pay bills, which can result in eviction from their homes. Or they neglect to take medications and manage issues related to their health and safety. Without assistance, these adults can suffer terribly, so it's crucial to take the right steps to protect them.

The question is, what are those "right steps?" We can't give you the answer in a blog like this because the appropriate actions will be different depending on the details of the particular situation. If you contact The Nordhaus Firm, we'd be happy to schedule a free consultation where we can explain the options that make the most sense under the circumstances. In the meantime, here are some of the issues to consider as you move forward. The fact that you're asking these questions shows that you've taken the most crucial step already by acknowledging the need, but it is important to act before it is too late.

Understanding Guardianship

Guardianship can be a helpful tool for adults who are vulnerable, but it is often not the best tool. When someone has a guardian, they are considered to be a "ward," and the ward's guardian holds most or all of the ward's rights.

This is a natural situation for children because they are young and lack the knowledge and experience to make the best decisions for their lives. So they have a parent or appointed guardian to manage their care and financial situation. Unless a physical or mental disability interferes with their ability to manage the facets of their lives, when children reach the age of majority, their guardians lose authority, and those grown children take responsibility for their own actions.

The process is not natural when guardianship involves an adult. Guardianship takes away the rights the adult has exercised for years and gives those rights to someone else. It is considered an extreme measure for that reason. Before a judge will approve a request for guardianship, the judge will need to be satisfied that there is no other option available. In addition, the law gives an adult who may become a ward in a guardianship proceeding the ability to protest the change and fight against it.

The process of authorizing a guardian for an adult can require extensive and sometimes invasive legal efforts. It can take years if contested, and be costly and divisive. This is why it is important to understand and implement alternatives to guardianship when possible.

Options Besides Guardianship

How can you help a vulnerable adult without resorting to the drastic step of taking away their rights to establish guardianship? The options vary depending on the needs of the adult in a particular case. The needs are considered in two separate categories: the need for assistance with financial matters and the need for help with personal care and living arrangements.

Power of Attorney

One of the easiest ways to assist an adult without taking away their rights is to have them grant power of attorney, thereby sharing decision-making authority. Unlike guardianship, which takes away decision-making authority and gives it to the guardian, granting a power of attorney allows the adult to retain their authority while also authorizing someone else to make decisions for them.

There are separate types of powers of attorney, one for granting financial authority and one for granting authority to make health care decisions, generally known as a medical power of attorney. An experienced estate planning attorney can develop a customized power of attorney that grants authority tailored to the needs of a particular situation.

For instance, if an adult wants to give a trusted friend the ability to pay bills from a checking account but not give that friend access to all their other accounts, the power of attorney can be drawn up to grant specific authority for just one account. This is preferable to adding the friend's name to the account, as a power of attorney grants authority without ownership rights. If you add someone's name to a bank account, they become a co-owner and their creditors can potentially take the funds in your account. That can't happen if you've only granted a power of attorney over the account.

A financial power of attorney can be crafted in broad terms, too, giving the agent access to more or everything. It can also be set up so that it only becomes effective if a certain condition occurs. For instance, your mom might have an attorney write up a power of attorney so that it remains dormant unless a doctor declares your mom to be legally incompetent. At that point, you could take over managing her financial affairs.

Medical powers of attorney are generally more limited. The person designated as an agent can only make decisions when a doctor certifies that the person who granted the power of attorney is unable to make their own decisions. When a medical power of attorney is in effect, the agent can authorize doctors to perform treatments and make decisions about care, but the law sets some limits. For instance, an agent cannot agree to put someone into a mental hospital.

Supported Decision-Making

A different type of alternative to guardianship is known under Texas Law as "supported decision-making." This process is designed to allow a vulnerable adult to be a part of the decision-making process with regard to issues such as where they will live and the medical care they want to receive.

The vulnerable adult makes an agreement with someone who will serve as their "supporter." The supporter agrees to provide information and help the vulnerable adult weigh options, make choices, and communicate those choices. However, the supporter does not have the authority to override the wishes of the vulnerable adult.

Other Options

Every individual's abilities and personal situation are different, so there may be a wide variety of other options for assistance with financial management and personal care. Attorneys who handle guardianship proceedings also help families with alternatives to guardianship when appropriate, so the best way to find options for your situation is to sit down with an attorney to review your goals and circumstances. It might make sense to establish a living trust, living will, or other legal documents that can provide for management and decision-making.

When Does Guardianship Become

Unavoidable?

The alternatives to guardianship all have some prerequisites, and when those haven't been satisfied, then guardianship may be the only option left. Guardianship is established when someone is shown to be legally incapacitated, meaning that they cannot manage their own personal care or financial matters. If an individual still retains the capacity to understand a document such as a power of attorney, then they can legally agree to a power of attorney. However, if that individual is suffering from a mental or physical disability that prevents them from comprehending a legal document, then they can't legally sign it.

As a general rule, if someone is incapacitated, then it is too late to avoid guardianship. However, incapacity is not always permanent, even with elderly individuals. It is possible to get a temporary guardianship to stabilize an individual. If they regain the ability to make their own decisions, then the guardianship can be terminated or allowed to expire, and that person can execute powers of attorney or other options to prevent the need for future guardianship proceedings.

Someone can be incapacitated with respect to some issues but retain capacity to handle other matters. Doctors and mental health professionals usually must conduct in-depth exams before declaring someone to be incapacitated. The reverse is not true—you don't need to have a physician certify that someone has the capacity to sign a power of attorney or other document. The estate planning attorney you're working with can assess whether the vulnerable adult understands the nature of the document and the authority that it will grant.

The Nordhaus Firm Helps with Guardianship, Powers of Attorney, and Other Options to Protect Vulnerable Adults

Adults who struggle to manage their affairs are taken advantage of far too often. It is important to take the best steps to protect them from exploitation and from the dangers of neglect. Sometimes, establishing guardianship is only one way to ensure they receive the care and assistance they need. Other times, there are more moderate options to provide security and assistance.

The Nordhaus Firm helps individuals and families in a wide array of situations. Whether you are putting plans in place “just in case” or you have current concerns that need to be addressed immediately, we are ready to help with compassionate, knowledgeable guidance. The sooner you act, the more options you may have available and the easier (and less expensive) it can be to implement those options.

We invite you to call us at 214-726-1450 or contact us online to schedule a free consultation to learn more about the ways we can assist with your unique needs.