You may have heard about strategies for avoiding guardianship or establishing alternatives to guardianship but don’t understand the reason for the concern. What’s so bad about guardianship that you need to pay so much attention to alternatives?

While every guardianship proceeding is different, when you understand the overall process and requirements, you gain an understanding of why it is best to avoid it. In fact, the courts generally require you to do so if possible.

Guardianship is an Extreme Measure

When a person is appointed guardian over another adult, who becomes a ward, the ward loses the legal ability to make decisions on their own behalf. One person effectively controls another. While this is a natural state of affairs for children, it is not for adults. It represents an extreme restriction of individual rights.

Recognizing the extreme nature of a guardian determination, lawmakers require courts to find by clear and convincing evidence that “alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible.” Moreover, the court must also determine that “supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible.”

Many organizations lobby against the use of guardianship as a demeaning situation that strips personal autonomy, liberty, freedom, and dignity.

The Guardianship Process is Costly and Time-Consuming

Guardianship requires formal appointment by the probate court or county court. Once someone files the appropriate petitions, the court must first review evidence to determine whether guardianship is necessary, and then the court must decide who the appropriate guardian should be. The proposed ward has the right to object to guardianship and if they do so, this can extend the process considerably.

Among other things, the court needs to find that:

The proposed ward meets the legal definition to be considered incapacitated
The best interests of the proposed ward would be served by the appointment of a guardian
The appointment of a guardian will protect the ward’s rights or property
Alternative measures will not work in this situation

These determinations often require detailed evaluations. If the court determines that the proposed ward can manage some but not all tasks necessary to provide self-care or manage a property, then guardianship may be authorized on a limited basis.

Alternatives Are So Much Easier

With advance planning, it is easy to avoid the need for guardianship in many situations by preparing a few documents. For instance, if an adult has set up a durable power of attorney for finances or a revocable trust with the right provisions, an agent or successor trustee can step in to manage financial matters for someone who becomes incapacitated. If they set up a medical power of attorney, their agent can manage their

health care.

An individual with disabilities can use supported decision-making as an alternative to guardianship. Special needs trusts, the use of a representative payee, and many other options exist to avoid guardianship, and they are all easier and less expensive to put in place.

Find Out How You Can Avoid Guardianship

At The Nordhaus Firm, we protect families in a variety of ways. When we can prepare plans to avoid the potential need for guardianship, we save money, heartache, and time for families in difficult situations.

Of course, sometimes, guardianship cannot be avoided, and we are prepared to make the process as easy as possible. To discuss the best options for your family now and in the future, we invite you to schedule a consultation.