



Atlantic Law PLC

PLANNING FOR GENERATIONS. PLANNING FOR LIFE.

GUARDIANSHIPS, CONSERVATORSHIPS AND THE ALTERNATIVES

A Virginia Guardianship or Virginia Conservatorship is a legal, court-ordered relationship in which one individual becomes a substitute decision maker for another. In Virginia, guardians and conservators are appointed by a Circuit Court judge to protect an incapacitated person (i.e., a person who cannot make decisions without the assistance of another person).

GUARDIANSHIP

The primary responsibilities of a Virginia guardian are to decide where the incapacitated person will live and how meals, personal care, transportation, and recreation will be provided and health care decisions made. A guardian must also make annual reports to the local department of social services about his actions and the welfare of the incapacitated person. A guardian's authority to make decisions may be limited depending on the ability of the incapacitated person's ability to care for his own personal, health, and safety needs.

CONSERVATORSHIP

The primary responsibilities of a Virginia conservator are to manage an incapacitated person's financial and property affairs. The conservator must take control of the person's assets, establish a budget, pay the person's debts, and prepare an inventory and periodic accountings of the person's assets and submit these reports to the Commissioner of Accounts for review and approval. Like the authority of a guardian, the authority of a conservator may also be limited depending on the situation of the incapacitated person.

ALTERNATIVES TO GUARDIANSHIP & CONSERVATORSHIP

The appointment of a guardian and/or conservator removes a person's right to make decisions for himself and should only be considered as an option of last resort when no less-restrictive alternatives are available. With proper estate planning, a person may be able to take advantage of one of these following less-restrictive alternatives:

1) Durable Power of Attorney

A Durable Power of Attorney is a document by which an individual (the Principal) appoints another individual (the Agent) to make financial and property decisions on his behalf in the event that the Principal is unable to or unwilling to do so on his own. By signing a Power of Attorney, you may be able to avoid the need for the appointment of a conservator if you later become incapacitated.

2) Medical Power of Attorney

A Medical Power of Attorney is a document by which an individual (the Principal) appoints another individual (the Agent) to make medical decisions on his behalf in the event that the Principal is unable to do so on his own. By signing a Medical Power of Attorney, you may be able to avoid the need for the appointment of a guardian if you later become incapacitated.

3) Trust

A trust is an arrangement whereby a person or organization (the trustee) manages property for the benefit of another person (the trust beneficiary). The trust agreement describes the nature of the relationship and the rules the trustee must follow, including allowable disbursements and distributions. A trust may be revocable (i.e., able to be revised and/or terminated after it is established) or irrevocable. By establishing and properly funding a trust, an individual may be able to avoid the need for a conservatorship, as his assets will be owned by the trust and the trustee will already have the authority to manage them.

4) Representative Payee

A representative payee is a person appointed by a government agency to receive another person's benefits on his behalf and use those benefits to pay that person's living expenses. The Social Security Administration is the most common example of a government agency that uses the representative payee arrangement.

This document is for informational purposes only and is not legal advice. You should consult with an experienced estate planning attorney before executing any of the estate planning documents discussed in this document. While every effort has been made to ensure that the information in this document is accurate, Atlantic Law PLC assumes no responsibility for any errors contained therein and is not responsible for any damages that may result.

Atlantic Law PLC © Copyright 2016-2025