

## Watching Out For Our Wards

Understanding the pitfalls and positives of guardianship

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To those who haven't witnessed it first-hand, guardianship may sound like a heroic assignment in which bigger, stronger, more seasoned protectors keep individuals unable to fend for themselves out of harm's way. But the reality is far less ideal.

More and more cases are being assigned to professional guardians because round-the-clock responsibility for another individual's life is often more than a family member or well-intentioned

friend can bear. We're just seeing the earliest waves of a mounting tsunami that could send enormous numbers of individuals unnecessarily into guardianship and place unbearable stress on even the most willing and able professionals.

### NGA Standards

The National Guardianship Association's (NGA) standards and certification process ensure that professionals who take on guardianship responsibilities do so with both commitment and competence and that they're suited to tackle the most important aspect of these cases—preserving the dignity and quality of life of the ward.

But while a certified professional guardian has demonstrated the skills and commitment necessary to take on the profound obligation of seeing to a ward's welfare, his capacity to do so isn't limitless. In fact, the NGA states in its Standards of Practice that "the guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers."

### Duties

In a healthy arrangement, a guardian should:

- **Evaluate and act on each situation on a case-by-case basis**, carefully considering those whose lives hangs in the balance as individuals.
- **Be ready, willing and able to care about the ward**, including demonstrating an understanding of the responsibilities that accompany the guardian's role. Those responsibilities often range from things as straightforward as deciding where the ward will live to more complex and potentially overwhelming issues, such as deciding whether cancer care should continue or life support should end.
- **Avoid over-burdening himself with too many cases**, by aligning with a qualified third-party source of professional guardianship. Such partners should put the needs and stated desires of the ward above all else and be able to remain objective in making decisions that affect the ward's estate and quality of life.
- **Have a succession plan in place**, so that the death or departure of an individual or business won't leave the ward unattended, whether for a short period while a new guardian is assigned or for a longer period if the situation goes undetected.

## Consider Power of Attorney

A staggering number of people will need to be assigned to guardians in the next 10 to 20 years. The sad fact is many people assigned to guardians have left the world no other choice. At least some of them could have avoided that eventuality by setting up a power of attorney (POA) while they were still deemed capacitated.

A POA can protect an individual from losing his independence. It lets the individual set forth how he wants to live out his life before he's incapable of making and carrying out those decisions. It also allows him to identify whom he wants to execute those plans and to review them while he can still speak for himself.

Encouraging your clients to establish a POA while they can lets them place their welfare in the hands of someone they've come to trust rather than leave it to the courts to assign control over their lives to someone they've never met.

### POA Tips for Clients

To help clients set up a successful POA, consider offering them these tips:

- **Be empowered in the creation of your own POA.** Don't let someone draft one for you before getting to know you and your specific wants and needs.
- **Avoid using standardized forms** for a document that holds so much in the balance; if you do, make sure to customize it with statements that are specific to you.
- **Find the right person.** The POA is a privilege that can easily be abused. Make sure you choose someone you can really trust, someone whom you know is committed to helping you. Choosing someone who ultimately abuses the POA can land you in a situation in which your resources are so decimated that there's no recourse but to assign you to guardianship.
- **Don't feel obliged to choose a family member.** While a spouse, child or sibling may be the best pick, this isn't always the case. Family members who live far away may not be as familiar with the places you go, the people you see and the things that you do day to day. These are the things that make life meaningful; having them taken away by someone who doesn't know about them or understand what they mean to you may be a major setback to your quality of life, so make sure you choose someone who understands you.
- **Consider a professional.** If no family or friends are suitable, a professional organization can step in to handle the task. A qualified professional POA should bear no prior agenda or ulterior motive in your affairs and should strictly sign on to carry out your pre-stated wishes. Just as with a personal selection, however, make sure the professional takes the time to listen to and learn about you.
- **Choose the right type of POA.** There are at least five types of POAs, and selecting the one that best fits your needs can mean the difference between satisfaction and sacrifice. Some are used for limited time or purpose, while others are open-ended and go into effect as soon as someone is deemed incapacitated. Make sure to go over each carefully with an attorney to determine which one is right for you.

Guardianship isn't going to go away, but it doesn't have to be seen as the quick or only solution, nor does it have to mean the end of a suitable life for the ward. Understanding that there are options and realizing the implications of each is essential if we're to remain committed to treating our clients as humanely as possible.

*Patricia A. Maisano is Founder and Chief Innovation Officer of IKOR, a nationally expanding network of healthcare advocacy and guardianship offices that help trust officers, wealth managers, estate attorneys and others ensure the proper care of their senior and disabled clients.*