



LEGAL ASPECTS OF CAREGIVING

OVERVIEW

- **Important Legal Concepts for decision making**
- **Planning Ahead**
- **Where can I find help with day to day life?**

Important Legal Concepts for decision making

- **Powers of Attorney**
- **Guardianships**
- **Other options?**

AGE OF MAJORITY

Nebraska age of majority is 19 years of age



WHAT'S MY AGE AGAIN?

- 18 years old

- Mental Health Decisions
- Federal Benefits (Social Security)
- Lease an apartment or car
- Get a mortgage
- Vote
- Buy a lottery ticket
- School



- 19 years old

- State benefits (Medicaid)
- Guardianship
- Power of Attorney
- Household
- Court cases
- Married
- Surrogate Decision Making

Powers of Attorney vs. Guardianships

- **THE KEY DIFFERENCE IS CAPACITY**
- **Power of Attorney**
 - If the person has capacity to complete a Power of Attorney, a guardianship is not necessary and not in the least restrictive alternative
- **Guardianship**
 - No capacity
 - Must be necessary and in “the least restrictive alternative”
 - Must be the course of action that puts as few limits as possible on a person’s rights and freedoms while still meeting a person’s needs

Two Kinds of Power of Attorney

- **Health Care Power of Attorney**

- Agent makes health care decisions on behalf of the principal
- Principal is incapable of making health care decisions
- Goes into effect when there has been a determination that the principal is incapable
 - Not a living will

- **Financial Power of Attorney**

- Agent makes decisions and acts with respect to property and money
- Principal may or may not be able to act and make decisions
- Goes into effect upon execution (signed and notarized)

When does a POA end?

- Death of the Principal
- The Principal revokes the POA
- The POA provides that it terminates
- The purpose of the POA is accomplished
- The agent dies, becomes incapacitated, or resigns, and there is not a successor agent or an alternative POA
 - Note: Unlike other legal documents, the execution of a POA doesn't revoke a previously executed POA, unless the subsequent POA provides that the previous POA is revoked.

What is a Guardianship?

- Person(s) appointed by the court to make decisions for the protected person (Ward).
- The protected person is unable to make or communicate responsible decisions concerning their person and their estate.
- No least restrictive alternative.

Types of Guardianships

- Full Guardianship vs. Limited Guardianship
- Temporary vs. Permanent Guardianship
- Adult Guardianship
 - Must be over the age of 19
 - Medical Evidence

Authority of a Guardian

- The appointment of a Guardian is necessary because the above-captioned individual lacks sufficient understanding to make or communicate responsible decisions concerning their own person with regard to the following:
 - a. Selecting the ward's place of abode within or without this state;
 - b. Arranging for treatment or medical care;
 - c. Protecting the ward's personal effects;
 - d. Giving necessary consents, approvals, and releases;
 - e. Arranging for training, education, or other rehabilitative services that are appropriate to the ward's circumstances;
 - f. Applying for government or private benefits to which the ward may be entitled;
 - g. Instituting proceedings to compel any individual liable for the ward's support to support them;
 - h. Entering into any contractual agreements;
 - i. Receiving money and tangible property deliverable to the ward and applying such money or property to the ward's expenses for room, board, treatment, medical care, personal care, personal effects, training, education, and rehabilitative services.

Who can be Guardian?

- The Court has a list of people who have priority:
 - A person nominated by a power of attorney
 - A person acting under a power of attorney
 - Spouse
 - Adult child
 - Parent
 - Any relative whom someone has resided with for more than 6 months
 - A person nominated by the person caring for the patient or paying for benefits
 - The Office of the Public Guardian

Court Requirements to become guardian

- The Court requires every person that requests to become permanent guardian to complete:
 - Criminal Background Check
 - Abuse/Neglect Registry Check
 - Sex Offender Registry Check
 - Credit Check
 - One-time Guardianship Training
- Once someone is appointed guardian:
 - Completed financial documents for the protected person/child
 - Complete an annual report with the Court.

End of Life Decisions

- A full guardian has the same powers, rights, and duties that a parent has. May give any consents or approvals necessary to enable the patient to receive medical care, treatment.
- In the guardianship statutes, there is no definition of a “medical decision”, so it is construed broadly
- Case law indicates that “medical decisions” including life sustaining treatment decisions. In re Interest of Tabatha R., 252 Neb. 687 (Neb. Supreme Court 1998)

Conservatorships

- Person(s) appointed to make financial decisions for the protected person. The conservator typically is given the power to enter into contracts, pay bills, invest assets, and perform other financial functions for the protected person.
- Typical cases where a conservatorship is necessary:
 - Settlements
 - Large estates

MYTHS

- A guardianship is not filed before the age of 19 for an adult
- Length of the process
- Nothing to do prior to filing
- A power of attorney executed after a guardianship is established is not valid.
- Multiple Guardians
- “Ward of the state”

Other Options?

- Social Security Administration
 - Representative Payee
- Veterans Affairs
 - Fiduciary Payee
- Surrogate Decision Making
 - Nebraska Revised Statute 30-604 “A surrogate may make a health care decision for an individual if the individual has been determined to be incapable by the primary health care provider and no agent or guardian has been appointed for the individual. A determination that an individual is incapable of making a health care decision shall not be construed as a finding that the individual is incapable for any other purpose.”

Planning Ahead

- Where to start?
- What are the needs of the person?
- What is available?
- What is the least restrictive alternative?

Planning Ahead

- Informal Supports
 - Transportation
 - Meal Delivery
 - Medication Management
 - In home care
 - Signer on accounts
 - Bill pay

Planning Ahead

- Good things to know:
 - Social Security does not accept POAs
 - Nebraska Supreme Court Forms
 - DHHS/Medicaid DOES accept POAs
 - Keep a copy of the necessary document readily available
 - Navigating Financial Institutions
 - Enable Accounts
 - ROIs

Where can I find help with day to day life?

- Social Workers
- DHHS programs
- Legal Aid of Nebraska Handbooks
 - Mental Health Handbook
- Molly Blazek Virtual Legal Clinics



Questions?

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