Primer on Guardians, Conservators & Incapacitated Adults

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Baby Boomers—Americans born between 1946 and 1964—now account for nearly 50 million people nationwide, according to census data. South Carolina is home to more than 800,000 of them, and it is anticipated that the number will grow to roughly one million by 2025. That's nearly a quarter of the state's population.

With this aging population comes something else: lawyers are being called upon to navigate the fine line between elders retaining their independence and needing protection. This raises complex, sometimes challenging legal questions. Protecting a vulnerable elder means limiting their legal rights, which is a major step, and requires the involvement of a court. In South Carolina, probate courts have exclusive jurisdiction over the protection of incapacitated adults, including proceedings for the appointment of a guardian and/or conservator.

What is a Guardian?

A guardian is a person (or institution) responsible for taking care of and supervising someone who is known as a "ward" of the state. A "ward" is a person who has been found to be incapacitated. Legally, this means he or she lacks the understanding or capacity to make reasonable decisions concerning his or her person or property. In layman's terms, it refers to someone who's not capable of understanding and acting in their own best interest, at which point, a guardian needs to step in.

What is a Conservator?

A conservator, on the other hand, is responsible for taking care of the property – i.e., the money – of another person. In effect, the conservator acts as a guardian of the estate of a "protected person." A protected person can be a minor or someone who's incapacitated. Incapacity can result from a number of conditions, including mental disease—like Alzheimer's or dementia—physical illness, advanced age, and chronic drug use or intoxication. While the roles are distinct, the same person can serve as an incapacitated person's conservator and guardian. In other words, one role (guardian) looks after the person; one (conservator) looks after property; and sometimes, one person does both.

How Does the Court Decide Whether Someone Needs a Guardian or Conservator?

The powers and responsibilities of a guardian or conservator are determined by the level of capacity of the individual. The probate court determines, based on evidence, someone's ability

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to conduct her own affairs. In the case of a full guardianship, the guardian has the same powers, rights, and duties over an incapacitated person that a parent has over a child. This includes things like custody, medical care, protection of property, and so on. If, however, the court determines that the individual can handle some of her own affairs, the court will grant a limited guardianship based on the individual's specific needs. The goal of a limited guardianship is to maximize self-reliance and independence, while protecting someone who can't protect themselves.

As our state's percentage of Baby Boomers grows, so too will the importance and interpretation of these terms. If you have any questions regarding guardians or conservators, contact our experienced probate and estate litigation lawyers today.

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