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WHAT IS GUARDIANSHIP IN INDIANA?



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It can seem as though estate planning is a purely financial endeavor, but you should plan ahead comprehensively and address all contingencies.

The matter of guardianship is something to take into consideration when you are planning your estate. It can come into play under a couple of different scenarios. We will provide an explanation in this paper.

MINOR CHILDREN

Studies are conducted on a periodic basis that measure estate planning preparedness. The majority of people under the age of 50 do not have a proper estate plan in place.



Many younger adults are the parents of minor children. Clearly, people usually don't pass away when they are in their twenties, thirties or forties. At the same time, as we all know, tragedies do strike each and every day.

You should certainly have an estate plan in place if you are the parent of a dependent child, just to be sure that your children are provided for appropriately if the unthinkable was to take place.

When you create an estate plan as the parent of a minor child, you can nominate a guardian. This would be the person who would care for the child or children if there were no parents left alive.

The court would ultimately determine the matter of guardianship, but your nomination would carry a great deal of weight. Unless there was a compelling reason why the nominee was incapable of serving the best interests of the children, your nomination would be honored by the court.

ADULT GUARDIANSHIP

There is also the matter of adult guardianship. This can be a difficult subject to confront head-on when you are fully capable of handling your own affairs, but a significant percentage of seniors become incapacitated at some point in time.

Some people become physically incapacitated due to serious illnesses, but they may live for an extended period of time. Others become mentally incapacitated, and this is a widespread phenomenon due to the ubiquity of Alzheimer's disease.



This is a very serious matter that you should understand thoroughly if you want to be pragmatic about the eventualities of aging. To learn about Alzheimer's disease, you may want to visit the Alzheimer's Association website. There is a lot of compelling information on the site.

According to the Alzheimer's Association, around 13 percent of people who are 65 years of age and older are suffering from the disease.

The likelihood of contracting the disease increases as you get older. Approximately 4 out of every 10 elders who are 85 years of age and up have contracted Alzheimer's disease.

People with Alzheimer's disease experience dementia, and this can rob you of your ability to make sound decisions on your own.

If you were to become incapacitated for any reason, people around you could petition the state to appoint an adult guardian to make decisions on your behalf.

This is a positive safeguard on the one hand, but on the other hand, you have no control at that point.

The court could appoint someone that you would not have chosen yourself when you were capable of handling your own affairs.

This is one potential drawback. In addition to this, members of your family may not all be on the same page with regard to the optimal course of action. This can cause disagreements during a time when love ones should be coming together to support one another.

DURABLE POWERS OF ATTORNEY



It is possible to be proactive with regard to possible incapacity when you are planning your estate. You could execute legally binding documents called durable powers of attorney.

With these documents you name agents or attorneys-in-fact to act on your behalf should you become incapacitated at some point in time. A durable

financial power of attorney can be used to appoint a financial representative, and you could create a durable power of attorney for health care to name a medical decision-maker.

When you have these documents in place, there would be no need for a guardianship. Your family and the powers-that-be would be aware of your wishes, and they would be honored. Representatives of your own choosing would be empowered to act on your behalf.

SUMMARY

A guardianship hearing would be convened if a minor child was left without parents or an existing legal guardian. As a parent, you could nominate a guardian in your last will.

Adult guardianship can enter the picture when an adult becomes unable to handle his or her own affairs. You can prevent a guardianship and name your own hand-picked decision-makers through the execution of durable powers of attorney.

If you would like to put your durable powers of attorney in place, schedule a consultation with a licensed estate planning attorney.

REFERENCES

The Indiana Lawyer

<http://www.theindianalawyer.com/indiana-legislature-passes-new-guardianship-laws/PARAMS/article/26702>

The Alzheimer's Association

<http://alz.org>

Caring.com

<http://www.caring.com/articles/adult-guardianship>

About the Author

Paul A. Kraft

Paul Kraft is Co-Founder and the senior Principal of Frank & Kraft, one of the leading law firms in Indiana in the area of estate planning as well as business and tax planning.



Mr. Kraft assists clients primarily in the areas of estate planning and administration, Medicaid planning, federal and state taxation, real estate and corporate law, bringing the added perspective of an accounting background to his work.

In addition to his practice, Mr. Kraft has lectured extensively in the areas of living trust planning, Medicaid planning, and presenting public and private seminars on the importance of proper estate planning. He has also authored various articles on estate planning and is a contributing author of LEGACY: Plan, Protect, and Preserve Your Estate—Practical Answers from America's Foremost Estate Planning Attorneys.

Mr. Kraft is a co-founder of the Indiana Network of Estate Planning Professionals, a charter member of the American Academy of Estate Planning Attorneys and a founding member of the National Network of Estate Planning Attorneys. He is also a member of the Indianapolis Bar Association, including the Taxation, Business Law and Estate Planning sections; the Indiana State Bar Association, including the section on Taxation Law; the Indiana CPA Society; and the Estate Planning Council of Indianapolis. Mr. Kraft is admitted to practice law before the Supreme Court of Indiana, U.S. District Courts, and U.S. Tax Court.

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