

On Guard

Controlling your own destiny by viewing guardianship as a last resort

BY TOM VALEO

Here's the most important thing you need to know about legal guardianship: Avoid it at all costs.

Fortunately, that's easy to do. Just consult an elder law attorney and name someone you trust to manage your affairs if you become unable to do so. Give someone durable power of attorney to manage your financial affairs if you become unable to make decisions, and name a healthcare proxy to do the same for your medical care. Also, write an advance healthcare directive so your proxy has written proof of your wishes. You might even want to name your own guardian in case a court at some point deems one necessary for you. That's what U.S. Rep. Lane Evans (D-Ill.) has done. Faced with the prospect of developing dementia from his Parkinson's disease, the 54-year-old congressman recently named his chief of staff, Dennis King, as his guardian.

With those precautions, you can avoid the kind of ambiguity that invites guardianship, which can take your autonomy, your dignity, and vast amounts of your money.

"A legal guardianship is very expensive, and the whole procedure is not in your control," says Erica Wood, assistant director of the American Bar Association Commission on Law and Aging. "It may not even be in accordance with your wishes. Besides, it's embarrassing and stigmatizing. Nobody wants intimate details of their life in the public eye."

Consider Brooke Astor, the wealthy New York socialite and philanthropist. She named her own son to watch over her affairs, and even granted him a six-figure salary to do so. But now, at the age of 104 and reportedly suffering from Alzheimer's disease, she is suddenly at the center of a ferocious family squabble, with a court-appointed guardian trying to determine if her son, Anthony D. Mar-



BAD NEWS Reading all about it this July, many learned a cautionary tale on guardianship.

shall, improperly took millions of dollars from her while neglecting her care.

While such legal battles can erupt in any family with large enough assets, most of the time guardianship results from the failure of an elderly person to plan for disability and illness.

"Despite the widespread information out there about preparing for incapacity by giving someone power of attorney and writing an advance healthcare directive, many people just don't do it," says Wood. "A child can't just step in and take over. Without financial power of attorney, a child will have to go to

court to get guardianship."

The point of a guardianship is to name someone who will be accountable for a person's affairs. But unless someone watches over the guardian, the potential for mishandling of funds can become very strong, according to Naomi Karp, senior policy advisor in AARP's Public Policy Institute.

"In theory, the courts have that responsibility [of overseeing the guardian]," she says. "Guardians are required to file status reports and submit financial accounts, but AARP completed a study on guardianship monitoring and about

A matter of trust: Name someone to manage your affairs in the event you become unable to do so.

40 percent of the people surveyed said the court doesn't send anyone to visit the incapacitated person. Lots of courts don't even verify the reports submitted. Even if someone is filing reports, it may be that no one is reading them or checking bank statements or other records to see if the report is accurate. Oversight is resource intensive, and many courts simply don't have the resources."

Of course, private arrangements may lack oversight too. You can give someone power of attorney to manage your affairs and yet still have problems.

"Even if you pick people you trust, there's usually no good oversight," Karp says. "At least in a guardianship, the court has oversight and the guardian is responsible to the court and must file accountings. Also, the court can remove the guardian. When you give someone power of attorney, you have no protection if the person starts ripping you off."

In California, for-profit guardian agencies have started to appear, generating horror stories. A recent four-part series in the *Los Angeles Times*, titled "Guardians for Profit," revealed how professional conservators can gain control of an elderly person's estate with alarming ease. All it takes is a trip to court with some evidence that the elderly person needs a guardian. Most requests are granted on the spot. One man didn't know what had happened to him until he tried to pay for his lunch and discovered that he had a court-appointed conservator who'd cancelled his credit card. And a woman living in Sacramento received a letter informing her of a court appearance in Los Angeles the next day at which a professional conservator would seek control of her

86-year-old mother's affairs. The woman drove all night to get to L.A., but even though she made it to the hearing in time, the judge appointed the conservator anyway. She eventually regained control of her mother's estate, but the conservator and her attorney still got \$18,000 from

the estate after the mother died.

Once in charge of the estate, conservators control all assets. They can write generous checks to pay friends to fix up the house or to accompany the elderly person on doctor's visits. Some conservators even manage to get themselves or

their agency named as heir to the estate.

While such horror stories may be exceptional, they also demonstrate the loss of control that comes with guardianship.

"I read a newspaper article a few years ago that said guardianship 'unpersons' an individual, and you certainly can lose your fundamental rights," says the ABA's Wood. "A guardianship should be a last resort." NN

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For more information about guardianship, see RESOURCE CENTRAL on page 46.

SOME WAYS TO WATCH OVER YOU

GUARDIANSHIP: An arrangement granting the guardian legal authority to manage personal and business interests of another person who is unable to do so. Another term for legal guardian is court-appointed conservator.

DURABLE POWER OF ATTORNEY: Legal authorization to act on behalf of someone else in legal or business matters.

HEALTHCARE PROXY: A person you grant legal authority to make medical decisions should you become incapacitated.

LIVING WILL (advance healthcare directive): A legal document guiding healthcare providers about use of life-support systems (such as a ventilator or feeding tube) that could prolong life in a hopeless medical situation.

LIVING TRUST: A legal arrangement in which the grantor transfers property to beneficiaries. Commonly used instead of a will to avoid probate proceedings.