

# Power of Attorney vs Guardianship

## Power of Attorneys

### Key Points:

- ◇ No Court Process Required
- ◇ Individual Decides Who Will Assist Them
- ◇ Alternative to Guardianship

Power of Attorneys are written documents where an individual chooses who they want to assist them in decision making and management of their affairs under certain circumstances or if the individual cannot make decisions for themselves due to incapacity. No court process is required for the chosen Agent to act. The amount of authority the Agent has is determined by the type of power of attorney executed.

### Types of Power of Attorneys:

- ◇ General Durable Power of Attorney: gives the Agent the authority to handle and make decisions related to property, financial, and legal matters
  - ◆ Sometimes may include health care powers
- ◇ Health Care Power of Attorney: gives the Agent the authority to make health care decisions. Other important documents that assist the Agent in making these decisions include:
  - ◆ A HIPAA Authorization that gives the Agent the authority to receive protected health care information
  - ◆ A Living Will that indicates end-of-life wishes regarding life support, organ donation, and artificial nutrition and artificial hydration

## Guardianship

### Key Points:

- ◇ Court Process Required
- ◇ The Court Decides Who Will Assist The Individual
- ◇ Considered When No Other Alternatives Are Appropriate

Guardianship is a court process where a guardian is appointed by the court to make decisions and act on behalf of an individual who has been determined by the court to not have the capacity to make their own financial decisions, personal decisions, or both.

Any person or entity can petition the court to have an individual found incompetent. However, the petitioner is responsible for presenting clear and convincing evidence the individual is incompetent and a guardian is necessary. A petition for incompetency and guardianship should only be considered when no other less restrictive alternatives are appropriate.

An individual who has been determined incompetent by the court is called a ward. The guardian appointed by the court may be a family member, non-family member, or entity, and the guardian becomes the advocate and decision maker for the ward. As an advocate, the guardian helps protect the ward while also allowing them to participate in decision making as much as possible considering their capabilities. Guardians are required to file status reports with the court, often annually.

### Types of Guardianship:

- ◇ Guardian of the Estate: responsible for property, financial, and legal decision making (e.g., banking, bills, and taxes)
- ◇ Guardian of the Person: responsible for care, custody, and maintenance decision making (e.g., food, clothing, shelter, everyday needs, and health care decisions)
- ◇ General Guardian: has the powers of both Guardian of the Estate and Guardian of the Person



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