



# Navigating Guardianship, Alternatives, and Special Needs Planning

Paul Yokabitus  
Special Needs Planning Lawyer  
Cary Estate Planning  
[info@caryestateplanning.com](mailto:info@caryestateplanning.com)  
Cary | Raleigh | Wake Forest  
919-659-8433  
[www.caryestateplanning.com](http://www.caryestateplanning.com)

# Welcome, I'm Paul

- Special Needs Planner
- Founder of Cary Estate Planning
- Arc of the Triangle Board Member
- My Wife Alix
- Narrow Focus/Specialty
- Certainty of Outcome



# Agenda for Today

- What is Guardianship?
- Who is Eligible for Guardianship?
- Guardianship Process
- Guardianship Maintenance and Modification
- Guardianship Alternatives
- Special Needs Planning

# What is Adult Guardianship?

- A person has a disability or condition that makes it difficult for them to make decisions for themselves
- The person is a disabled adult (17 years and 6 months or older)
- An Applicant asks the Court to give the person's rights or authorities to the applicant to make decisions for them
- The Court appoints that person to be the Guardian with a specified scope of authority
- The Court oversees the Guardian's actions overtime

# Who is Eligible for Guardianship?

- 17 years and 6 months or older
- Mental or physical disability that impairs their ability to make and communicate important decisions regarding their personal and financial affairs (“adequate capacity”)
- Considerations:
  - Ability to manage their own personal/financial affairs
  - Level of support provided by family/friends
  - Potential for exploitation or abuse
  - Need for medical treatment or other care
  - Living situation and whether they are able to care for themselves

# Types of Guardianship

- Guardian of the Person: Care, custody, control, and medical decisions
  - Personal affairs
- Guardian of the Estate: Property, contractual rights, finances
  - Financial affairs
- General Guardian: Both
- Limited Guardian: Where a Guardianship Scope has limitations
  - Ability to vote, drive, work, engage in romantic relationships or marriage
  - Small sums of money
- Emergency Guardian: Limited in duration, meant to address an immediate need that can't wait for formal process

# Guardianship Process

- Application and Petition filed in County where disabled adult resides
  - Petition for Adjudication of Incompetency
  - Application for Appointment of Guardian
- Hearing on Petition and Application Scheduled
- Notice and Pleadings served by Sheriff
  - Notices sent to “next of kin”
- Appointment of Guardian ad Litem
- Hearing Takes Place
- Disposition – Appointment or Denial

# You're the Guardian – Now What?

- Letters of Guardianship
- Guardian of the Person: continues indefinitely, no ongoing review or reporting requirement
- Guardian of the Estate and General Guardian:
  - Surety Bond Renewals
  - Annual Accountings
  - Permission Requests
- Guardianship modification or reinstatement of competency



# Guardianship Alternatives

- Powers of Attorney
  - Financial
  - Health Care
- HIPAA Authorization
- Representative Payee
- Supported Decision-Making
  - Family, Friends, Advocates, Care Managers, Work Support, Professionals
- Trusts

# Special Needs Planning

- Creating Your Estate Plan
- Protecting Assets for your Child
- Protecting Means-Tested Public Benefits
  - SSI
  - Medicaid
- Appointing Trustee and Guardian after You've Passed Away

# Questions and Next Steps

- There are no “stupid” questions
- Schedule a Meeting with our Team
  - [www.caryestateplanning.com/call](http://www.caryestateplanning.com/call)
  - 919-659-8433
- paul@caryestateplanning.com

