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STATE-OF-THE-ART ESTATE PLANNING

GUARDIANSHIPS: WHAT TO DO WHEN YOUR LOVED ONES CANNOT MAKE DECISIONS

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*CERTIFIED WITH STATE BAR OF TEXAS TO FILE GUARDIANSHIPS

I. DETERMINE THE NEED

1. What does your loved one need help with?
2. Where does your loved one live? (at home alone or with someone else, vs. nursing/assisted living/independent living, etc.) If at a facility, does the facility offer any services that can assist your loved one? What type of living arrangements would benefit your loved one/what would they prefer?
3. Does your loved one have a disability? How does the disability impact their decision making ability or ability to care for themselves?
4. Do they have a support network? Do they have a doctor? Do their physician or any health professionals/caregivers in their support network share your concerns or have any suggestions?
5. Has your loved one made estate planning documents? Have they designated a person to be their power of attorney (someone to act on their behalf for certain types of decisions if they are unable to make these decisions)? If they have a power of attorney, is this person aware of the situation?

6. Are there any services or additional supports that can assist them? (At-home care, driving services, care manager, representative payee, bill pay assistance, making ADA accessible changes/additions to their residence, electric scooter, grocery shopping assistance, family members nearby willing to help, etc.)
7. Is your loved one in any immediate life threatening danger if they continue to be without additional assistance in decision making or personal care? How serious is your loved one's situation?
8. Have you discussed your concerns with your loved one? Has your loved one discussed their needs with their family members?

II. MAKE A PLAN

1. **START EARLY, START NOW before** it becomes an emergency!
2. Start with the basics—gather together your family members who want to be involved and your loved one and discuss concerns and problem solve jointly. Make sure everyone is on the same page as much as possible and have open lines of communication.
3. If your loved one does not have any estate planning (more specifically, incapacity planning) documents, discuss with them why it would be a good idea to have these prepared and encourage them to meet with an estate planning attorney. Preparing these documents ahead of time will most likely save them time, money, stress, potential family strife, court costs/fees, and any interruption in managing their affairs/healthcare.
4. Help your loved one—or encourage them to—create a budget for anticipated future needs and the associated costs for meeting those needs. Make sure their plan of action is budget-conscious and sustainable for the rest of their life in case they become unable to care for themselves or make decisions.
5. Discuss changes that could be made now that can help your loved one live independently for a longer period of time and prevent the need for assistance (i.e. motorized wheelchair, ADA changes to home/residence, exercise regimen, therapy, counseling, daily activities thru a senior or community center, living with a family member, at-home helper, trusted family member added to bank account as authorized user, setting up a rep-payee for public/VA benefits/SSI, etc.)
6. Be sure your loved one notifies all of their health care professionals, banking and financial institutions, family members, etc. of their preferences and plans in case they are unable to manage their own affairs—it will make the process go MUCH smoother if everyone is aware beforehand of your loved one's wishes.
7. Be sure your loved one gives copies of their most up to date estate planning documents to their doctors, nearby hospitals/ER, therapists, counselors, financial institutions, etc—their estate

planning attorney will assist them with knowing specifically which document to give copies of and to whom.

III. EXECUTE THE PLAN

1. Don't just discuss all of the above, be sure to put it all into action ASAP!

IV. GUARDIANSHIPS ARE THE LAST RESORT

1. Persons under Guardianship have extremely limited rights and have little to no independence. A person must be legally and medically determined to be totally or partially incapacitated in order to even qualify for a Guardianship.
2. The Guardianship process is understandably rigorous, time-consuming, complex, costly, and very carefully monitored by law enforcement officials, court officials, social workers and agencies, and Attorneys.
3. Only after ALL other possible ways of helping someone to manage their affairs and/or provide for their personal care have been attempted and COMPLETELY exhausted is a Guardianship advisable and allowable under the law.
4. The Guardianship process is so specialized and complex that only Attorneys with special certifications are able to practice Guardianship law and assist individuals with filing for Guardianships. These Attorneys must complete yearly training and compliance, and must be certified with the State Bar of Texas. If you are seeking legal assistance with a Guardianship, make sure your Attorney is certified to file for Guardianships!
5. There are two types of Guardians (you can be one or the other, or both, if necessary): Guardian of the Person and Guardian of the Estate. In a nutshell, each type of Guardian must file a report with the Court every year in order to be in compliance with Guardianship laws. Also, each type of Guardian must renew their "Letters of Guardianship" (this is what gives them their legal authority) every year.

A Guardian of the Person manages the incapacitated person's personal care and health care decisions. Guardians of the Person must file an "Annual Report" every year that basically details the various aspects of the incapacitated person's health and informs the Court of any changes in these aspects over the past year.

A Guardian of the Estate manages the incapacitated person's financial affairs and decisions. They must transfer all financial assets and monies to a special "Guardianship Bank Account"—the Attorney will assist the Guardian in setting this up. Guardians of the Estate must file an "Annual Accounting" every year that reports all financial decisions, expenditures, income, etc. to the Court.

The Court's auditors, staff, and Judge carefully review and analyze all Annual Reports and Annual Accounts that are submitted to ensure that the incapacitated person's affairs are being properly managed and that the Guardian is complying with Guardianship laws. The Attorney for the Guardian will prepare the Annual Account (The Annual Report is a 3-4 page form that the Guardian themselves fills out every year) each year and submit both reports to the Court for their Client.

The Guardian's Attorney should do the majority of the heavy lifting regarding the above.

6. Where there are no other options, or where parents need to make decisions for their adult disabled children (Intellectual disability, deaf/blind adult children, extreme physical disabilities like quadriplegia or paralysis), Guardianships provide a way for a "Guardian Angel" to step in and carefully manage the affairs of their loved one or family member.

7. If you and your loved one plan ahead, you may be able to avoid having to deal with a Guardianship altogether. Barring very extreme situations, a competent estate plan and other supports and services in place should minimize, if not prevent, the need for a Guardianship.

*The moral of the story is to **PLAN AHEAD** and to always keep your plans up to date! Keep your loved ones informed and build a network of support early on! Always plan for the worst and hope for the best.*

-Dominic J. Negrón