

LEGAL ISSUES

POWER OF ATTORNEY

A power of attorney (POA) is a written authorization to represent or act on another's behalf in healthcare decisions, private affairs, business, or some other legal matter.

The person creating a power of attorney can only do so when he/she has the mental capacity to do so. However, if the person loses capacity (from, for example, Alzheimer's disease or a head injury in a car crash) to grant permission at any time after the power of attorney has been created, the document will most likely stop being effective and enforceable unless the person specifically states in that power of attorney that he/she wishes the document to remain in effect even if he/she becomes incapacitated.

This type of power of attorney, that stays in effect even after the person becomes incapacitated, is commonly referred to as a durable power of attorney. It is important to note that if someone is already incapacitated, it is not possible for that person to sign and/or execute a valid power of attorney. A person must have capacity in order to validly sign legal documents, including a power of attorney. In order for a power of attorney to be a legal document it must be signed and dated by the person. This alone, however, is not usually considered sufficient if the legality of the document is ever challenged by a third party. Having the document reviewed and signed (and often stamped) by a notary public increases the likelihood of withstanding such a challenge.

GUARDIAN AND CONSERVATORS

Guardianship is a legal right given to a person to be responsible for the food, health care, housing, and other necessities of a person deemed fully or partially incapable of providing these necessities for them self.

Conservatorship is a legal right given to a person to be responsible for the assets and finances of a person deemed fully or partially incapable of providing these necessities for them self.

A guardian may be necessary when:

- A person has a physical or mental problem that prevents them from taking care of their own basic needs.
- A person who as a result of physical or mental problem are in danger of substantial harm.
- A person who has no one already legally authorized to assume responsibility for them.

In some cases it may be necessary for a court to appoint an emergency guardian, who can act on a person behalf during a crisis (such as a car accident) until they regain their ability to make their own decisions.

The guardian makes decisions about how the person lives, including their residence, health care, food, and social activity. The guardian is supposed to consider the wishes of the incapacitated person. The guardian is intended to monitor the legally incapacitated person, to make sure they live in the most appropriate, least restrictive environment possible, with appropriate food, clothing, social opportunities, and medical care.

The court supervises the guardian's choices on behalf of the person. After appointment an initial review is scheduled, Followed by annual reports by the guardian to the court. The purpose is to ensure the person is in fact benefiting from the decisions of the guardian.

INCAPACITATED

Incapacitated is defined as the lack of mental or physical capacity to sufficiently care for person and property whether temporarily, intermittently or permanently. The term is often used interchangeably with the word "incompetent," although the former traditionally describes medical status while the latter is a legal finding. However, most states use the term "legally incapacitated" to describe someone who is unable to meet basic requirements to preserve physical health and safety.

Definitions for legal incapacity that may trigger a guardianship proceeding vary by state, but most require evidence of the inability to understand or communicate information necessary to meet essential requirements of physical health, safety or property management. Depending on the jurisdiction, a person may be declared legally incapacitated by a family, district, county, probate or Supreme Court. The specific terms used to describe this legal status also vary by state, ranging from "disabled person" and "interdict" to "incompetent," although most use the term "incapacitated."