

LEGAL DEFINITIONS

CONSERVATOR: An individual appointed by the probate court to manage the financial assets, property of an incapacitated person. The responsibilities of the conservator are spelled out in the court order of appointment but there are a requirement that the conservator posts a bond and make periodic accounting settlements to the court. Preference of those who are entitled to be considered for appointment as conservator, including a relative who has resided with the incapacitated person prior to the filing of the petition, are determined by the court.

GUARDIAN: A person appointed by the probate court to make decisions concerning “the body” of an incapacitated person. The guardian is responsible for the health, personal care and maintenance of the ward. The responsibilities of the guardian are spelled out in the court order of appointment. Preference of those who are entitled to be considered for appointment as guardian, including a relative who has resided with the incapacitated person prior to the filing of the petition, are determined by the court.

GUARDIAN AD LITEM: A special guardian (attorney) appointed by the court to represent the interests of an individual declared to incompetent who is part to a suit or certain litigation. An individual will have a Guardian Ad Litem appointed to represent them in guardianship, conservatorship, commitment, etc., proceedings.

PROTECTIVE SERVICES GUARDIAN: A person 18 years of age or older whose behavior indicates that he/she is mentally incapable of adequately caring for himself and his/her interests without serious consequences to himself or others, or who, because of physical or mental impairment, is unable to protect himself from abuse, neglect or exploitation by others, and who has no guardian or relative or other appropriate person able, willing, and available to assume the kind and degree of protection and supervision required under the circumstances (**Outlined in the Adult Protective Services Act**). This action is usually taken after a report to, and an investigation by the Department of Human Resources.

INCOMPETENCY: A legal term synonymous with “incapacitated.” An “incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

LIVING WILL: Signed, dated, and witnessed document which allows the person to state in advance wishes regarding the use of life-sustaining procedures when dying. It comes into play only after the person becomes unable to make decisions concerning his/her care and is certified as being terminally ill by two (2) physicians, and death will occur whether or not such procedures or intervention is utilized.

POWER OF ATTORNEY: Signed, dated, and notarized authorization that someone gives to another person to act in his/her behalf. It may be general or limited to a specific action. The law requires ongoing mental capacity on the part of the maker for the agent’s action to be valid. This power of attorney will expire automatically upon the INCOMPETENCY, disability, incapacity or death of the maker.

DURABLE POWER OF ATTORNEY: A signed, dated and notarized authorization someone gives another to act in his/her behalf. It may be general or limited to a specific action. This durable power of attorney remains effective even after the maker has become incompetent, disabled, or incapacitated. Most attorneys believe the act is broad enough to include the granting of a durable power of attorney for healthcare decisions and are preparing such documents. The durable power of attorney expires at the death of the maker.

WILL: A signed, dated, witnessed, and notarized document that says how a person wants his/her assets divided after death. It must be drawn up and executed while the person is legally competent. A will may be found “invalid” (not binding) if written too late in a person’s illness.