

## **The Law and You**

### **Guardianship and Conservatorship for Mom or Dad?**

Our society is fast aging. People live longer. But increased age also brings with it certain ailments. Mom or Dad may begin to show signs of dementia or other debilitating illnesses. These illnesses may be severe enough that Mom or Dad needs to be protected.

At the same time that Mom or Dad are getting older, they often accumulate assets. These assets may need to be protected for the long term care of Mom or Dad.

A Will or a Trust may control how our assets will be distributed upon our passing. What most of us fail to consider, however, is who will control our assets in the event we become incapacitated *while we are still living*. Will my spouse or my children be in charge of my assets? Who will make decisions for me if I can no longer do so?

These questions implicate the issues of guardianship and conservatorship. A guardian is over the person; a conservator is over the assets of the person. A guardian is like a parent who makes all legal decisions for the parent's children.

If you were to become the guardian of your Mom or Dad, you would have the authority to make all decisions for that parent. You would decide where your parent lives, what medical care should be provided, what to wear, what to eat, and all related physical matters.

If you were the conservator for your Mom or Dad, you would have the responsibility to manage all assets for that parent. You would pay the bills and use reasonable and prudent means to protect the assets of your parent.

Whether a guardian or conservator, you do not assume the liabilities of Mom or Dad other person for whom you are the guardian or conservator. However, you could be liable for injuries or damages to your parent if your

actions are deemed negligent. But, your parent's debts and other obligations are not transferred to you as guardian or conservator.

If Mom or Dad signed a durable power of attorney, you may be able to adequately manage the financial affairs for Mom or Dad. However, if no such power of attorney exists or is deemed inadequate to fully manage all financial matters, you will need to be appointed conservator for your parent.

Appointment as conservator is made by the probate court. It is generally a simple and quick procedure, provided that none of your siblings or other persons object to your appointment. Similarly, a guardian is also appointed by the probate court, and the procedure can combine both appointments in the same proceeding and at the same time.

Two attorneys are needed: one for the individual seeking to be appointed as guardian and conservator and one for Mom or Dad. The law requires that Mom or Dad have an attorney to protect their interests during the probate proceedings.

While the appointment of a guardian or conservator is a straightforward procedure, it can become a difficult and costly proceeding if contested. Objections can be entered against the appointment by one of your siblings or other interested persons, including your parent for whom you are seeking such appointment.

If contested, the proceedings usually generate tremendous strains on family members. The proceedings can become protracted and last for many many months.

To avoid contention among children as to who should be appointed as guardian or conservator, a person can now nominate in advance his or her guardian and/or conservator. Such nomination can prevent the contention that may arise between siblings

over who should have control over Mom or Dad.

When you review your estate documents, or, if you are just beginning to prepare such documents, advise your Elder Law Attorney to include a nomination of guardian and conservator. It is an easy and inexpensive step to take and one that could prevent ill feelings and contention among your children. Or, if you are concerned about how to protect Mom or Dad or their assets, contact an Elder Law Attorney that has substantial experience in guardianship and conservatorship matters.

To ensure that your wishes are carried out, you should consult with an Elder Law Attorney. Check the National Academy of Elder Law Attorneys at (520) 881-4005, or the Yellow Pages under the heading of "Elder Law."