

Guardianship and Mental Illness

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When someone is living with severe mental illness, the process of obtaining guardianship can be particularly complex. Symptoms may be intermittent, leading individuals to resist legally imposed assistance and making it difficult for a court to establish whether or not they are competent to care for themselves.

The goal, of course, is to interfere as little as possible with a person's independence, seeking to intervene only when there are issues relating to health, safety or exploitation. In some cases, appointing a health care proxy, granting financial power of attorney or establishing a representative payee to manage government benefits may serve the purpose.

But a health care proxy is usually useless if the individual requires admission to a psychiatric hospital, since it can be invalidated at will by the person for whom it's drafted. On the other hand, a growing number of states have established psychiatric powers of attorney which, once signed by an individual, enable the agent, with agreement from a doctor, to admit them to a psychiatric hospital despite their objections.

Types of Guardianship

Full guardianship generally invests an individual with responsibility for medical, residential and a wide range of personal care decisions.

In some states, limited guardianship invests the guardian with specific responsibilities such as health care and housing with the ward retaining all other decision-making authority.

Temporary guardianship may be granted for a limited period in response to an emergency situation, while the time-consuming process of obtaining full guardianship is ongoing.

Who Should Be Guardian?

Family members are sometimes reluctant to become guardians, fearing that a ward's erratic behavior will be too disruptive or expose them to liability. In addition, guardians must make difficult decisions especially concerning money which can cause long-term damage to a personal relationship. In many states, there are public guardianship systems or social

service agencies that can assume such responsibilities, freeing loved ones to be family. And in some states, financial decision-making can be delegated to a conservator, which may be a financial institution. The down side is that the decisions of even the most conscientious of arm's length guardians and conservators can never be informed by the personal knowledge available to family members.

Seek Experienced Legal Advice

Obtaining guardianship of an individual with mental illness is more difficult than it is for other disabilities, requiring more witnesses and research. It's advisable to work with an attorney who's well versed in this area, not only for the building of a case but as a trusted attorney of record required by most states once guardianship has been granted. Guardianship is a serious responsibility, and you'll want someone steeped in mental health issues to advise you on rights and obligations as new circumstances arise.

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